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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,	)	
	)	Case No. 6:10-CR-60066-HO
Plaintiff,	)	
	)	
v.	)	June 12, 2012
	)	
STEVEN DWIGHT HAMMOND (1) and	)	
DWIGHT LINCOLN HAMMOND, JR., (2),	)	
	)	Volume 1B
Defendants.	)	
<hr/>		Portland, Oregon

TRANSCRIPT OF PROCEEDINGS  
(Jury Trial - Afternoon Session)

BEFORE THE HONORABLE MICHAEL R. HOGAN, DISTRICT JUDGE

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(Tuesday, June 12, 2012; 2:00 p.m.)

P R O C E E D I N G S

THE CLERK: This Court is back in session.

THE COURT: Mr. Matasar.

MR. MATASAR: Thank you, your Honor.

Ladies and gentlemen of the jury, I represent Steven Hammond, along with Alan Schroeder.

First, I'm going to tell you a little bit about what Hammond Ranches is. The most important thing is it's a cattle ranch. That's what's going on out there in the Steens Mountain. Steven and Dwight Hammond and their family are cattle ranchers.

It consists of Dwight Hammond, the father; Steven Hammond, the son; Susan Hammond, who is Dwight's wife; Earlyna Hammond, Steven's wife. And -- sorry. And -- and Steven and -- sorry. I'm having some problems. (Pause, referring.)

Let me just -- since I don't have Ms. Root or Ms. Cooke to assist me, it's sometimes possible to hit the wrong button. Okay.

Steven Hammond, their three children, Corbin, Claire, and Emery. That's what Hammond Ranches is.

Hammond Ranches has been a cattle ranch for

1 generations, even before Dwight Hammond, his ancestors; maybe  
2 from about the time Oregon became a state.

3 It's in Harney County, as you've heard, near  
4 Frenchglen. It consists of -- the ranching operation  
5 consists of private land owned by the Hammonds, and also  
6 public land that they use via a grazing permit, which they  
7 get every ten years. And that authorizes the grazing of  
8 cattle on public land. And there's intermingled  
9 private/public land. It sometimes seems -- looks like a  
10 checkerboard with odd-shaped squares.

11 And the terms that we're going to use in this trial  
12 consist of the allotments, the pastures. That's the B.L.M.  
13 or the public land that they use.

14 And the allotments that you'll hear throughout this  
15 trial are the Hammond allotment, the Hammond FFR -- for  
16 fenced federal range -- the Mud Crick allotment or creek.  
17 Sometimes -- either way. People say different -- different  
18 terms. I've been with the Hammonds so long I'm saying  
19 "crick." The Hardie summer allotment.

20 And within those allotment terms, there are not only  
21 names for pastures, but there are also old names that are --  
22 have been around for generations. You'll see terms like the  
23 Upper and Lower Field of Mud Creek. You'll see it -- one  
24 part called the School Section. You'll see Bridge Creek.  
25 There's Bridge Creek Road, which is not really that close to

1 Bridge Creek. And there are all of these terms that we will  
2 see throughout the case. And when the time comes, we will  
3 point them all out on a map. For me to give you the  
4 geography of them now will use up all of my time. North  
5 Field, which oddly enough is south of most of the other  
6 places in this case. And Dutch Oven, et cetera, et cetera.

7 The first thing I'm going to talk about -- and  
8 you'll see -- this is odd. But many of the things that I am  
9 going to talk about are very, very similar to what  
10 Mr. Papagni just talked about.

11 A lot of it is much different. I didn't see his  
12 opening statement before he gave it, so some of it will be  
13 very similar, but with wrinkles. The big difference is  
14 what -- what Mr. Blackman and I hope to talk to you about is  
15 what it means that there is a cattle ranching operation going  
16 on there. That's the thing we want to try to explain.

17 Mr. Blackman will have more of a detail than I about  
18 that. But that's -- that's the main thing that you need to  
19 understand.

20 In 1999, what they call the Hammond prescribed burn,  
21 this is the fire that Mr. Dyer is going to testify about.

22 Mr. Papagni, talked to you about it. Talked about  
23 this letter that he wrote. This is to advise you of concerns  
24 regarding the burning of public land. Okay?

25 The important thing that the evidence will show --

1 this is Exhibit 1104 -- that after the complete investigation  
2 occurred of this incident, for which they did get this  
3 letter, it was described as the Hammond prescribed burn. So  
4 it's an important point for you to remember.

5 No costs or fees were against -- were assessed  
6 against the Hammonds as a result of this incident. And it's  
7 important to also know in -- this is an exhibit. I don't  
8 have a number on there, by mistake. But there isn't -- this  
9 is an actual exhibit that will come into trial. This is a  
10 trespass register.

11 This will show you that in 1999, for example, two --  
12 there's different kinds of trespass. Of course, if cattle  
13 gets in the wrong place, at the wrong time, that's a kind of  
14 trespass. And these trespass -- No. 2 is a fire trespass.

15 And you'll see, for example, that just in 1999,  
16 there were five. One, two, three, four, five. And this is  
17 the Hammonds. And as Mr. Papagni told you -- case closed --  
18 when they say, "collection amount," nothing. But two of the  
19 ranchers that got a trespass, they must have gotten more than  
20 a stern warning because they had to pay some money.

21 Then 2001. You won't hear a more different set of  
22 facts in this case than 2001.

23 What's happening that day is it is a nice day. And  
24 the Government itself is doing a controlled burn in the  
25 morning. And you can see it.

1           And so what happens is -- and we will show you this,  
2 Exhibit 1109 -- at noon, Steven Hammond calls to the  
3 dispatcher and says:

4           Yeah, Tammi, this is Steve Hammond.

5           How are you?

6           Good.

7           Steven says, Good? Is there any reason why a guy  
8 can't be controlled burnin'?

9           The dispatcher says, All burn restrictions are off  
10 right now.

11          Steven says where it's going to be.

12          And the dispatcher says, Well, we've got our  
13 controlled burn going done right now, down there,  
14 too, right now. So there's going to be a lot of  
15 smoke. Laughing.

16          Okay. Sounds good.

17          Good enough. Bye-bye. Steve.

18          Then you'll see at about one o'clock, 13:06:27, a  
19 man named Pete Revak calls and calls the dispatcher -- a  
20 different dispatcher. And he's a little concerned.

21          He says, Hey, you guys got a controlled burn going  
22 up above Bridge Creek, too?

23          Dispatch: Above where?

24          Well, it's Bridge Creek on this north end of the  
25 Steens.



1 And the dispatcher says, No, we just have the one  
2 that's at V Lake.

3 Revak says, You've got this other fire.

4 And the dispatcher says, Oou, Hammonds is burning  
5 up there.

6 Revak says, Okay.

7 The dispatcher says, Yep, yeah, yep, that's where  
8 their ranch is located. That is in there, too.

9 So that's what happened.

10 And Mr. Ward, the rangeland specialist, he is -- and  
11 this may be important, may not be important. When he writes  
12 his report on October 24th, he gets the date wrong. Says  
13 September 31st. He's also talking about what he sees. He  
14 does a map. He maps the fire. He uses GPS, and does a map  
15 of the fire.

16 And I believe it was on Mr. Papagni's exhibit you  
17 see this shaped map, which is Dave Ward's map of where the  
18 fire was.

19 There was also a helicopter flight later on that  
20 mapped the fire. And this is the shape that was Dave Ward's  
21 shape. But the helicopter, which mapped the fire, mapped an  
22 area far to the west and almost completely on the Hammonds'  
23 land. I believe the Hammond line might be around here.

24 And so the helicopter pilot saw the fire as  
25 occurring far west -- much farther west and much -- started

1 much farther away from the hunters than Mr. Ward's map would  
2 indicate.

3 As I said, this is Ward's GPS plot, and the  
4 helicopter plot is the purple one.

5 The other thing I wanted to say about this fire is I  
6 say, "No O & C report." You will see throughout this case --  
7 Mr. Papagni took about one minute talking about it, but it  
8 will take a lot more time here -- his experts and ours -- to  
9 talk about an origin and cause report about what really  
10 caused these fires.

11 The science is extremely sophisticated. They find  
12 matches sometimes in fires. They can find all sorts of  
13 things. And you'll hear a lot more. But there was nothing  
14 like that done on the 2001 fire.

15 And then after the fire, after the fire Steve  
16 Hammond called B.L.M. at Frenchglen to tell them that the  
17 fire had crossed onto B.L.M. land.

18 And so after the fire occurred, Dave Ward said --  
19 and I think Mr. Papagni agreed with this -- there are two --  
20 two important points. One is there were no suppression  
21 costs. Two is range improvement. It got -- the range was  
22 improved. There's -- that's perhaps why they didn't assess  
23 any costs, because it had improved the range.

24 Now, there was a hunt going on on the 29th, 30th,  
25 October 1st. And we have some photos of that.

1           This is a picture of some of the people who were  
2 there on the hunt. Rusty Hammond who's Dusty Hammond's  
3 father. This is a deer hunt on 9-29-01.

4           We expect that both Rusty and Dusty will testify.

5           We will call him Russell because it's easy for us to  
6 get Rusty and Dusty confused. So we'll be calling him  
7 Russell here, for this trial.

8           Another photo of people who will be here, you see  
9 Scott Gustafson, who's an insurance agent from Canby. We  
10 expect he'll testify.

11           His son Tim, who you can't see very well in this  
12 photo, he was too young at the time, but he was close with  
13 Dusty. And Steven Hammond. And so that's a photo of them.

14           And I suppose it goes without saying that Rusty  
15 Hammond was wearing a white cowboy hat. And Steven Hammond,  
16 at least in this picture, was not. Rusty Hammond was.

17           Let me talk just briefly about the deer hunt. And,  
18 again, you'll have to decide when you hear these wildly  
19 different stories.

20           They were hunting in the morning. And what happened  
21 that day was Dusty Hammond -- the son, the child, the witness  
22 that's going to testify -- he was about 13 years old at the  
23 time. He was with another kid. Maybe -- we think it was Tim  
24 Gustafson. And they shot from way too far away at deer that  
25 were too young. They shouldn't have taken that shot -- or

1 those shots. And as you know kids that are hunting,  
2 sometimes this sort of thing happens.

3 And what happened then was because they hit one of  
4 the deer, Rusty, the father, or Russell, tried to get the  
5 deer. The animal was wounded. He shot several more times at  
6 the deer. He's going to tell you that. Rusty was wearing a  
7 white cowboy hat.

8 Now, Jacon Taylor. Jacon Taylor, we do not believe,  
9 was there that day. We will show you a photograph of Jacon  
10 Taylor at the ranch with Dusty Hammond, except it was at an  
11 elk hunt, and it was in early September. It was like  
12 September 15th.

13 So Jacon Taylor was not setting fires at the deer  
14 hunt on September 30th. He will tell you that, and we don't  
15 think you will conclude that he was. He wasn't even there  
16 that day.

17 As we say, the call was made. It had nothing to do  
18 with the hunters. Steven Hammond called. Nothing to do with  
19 the hunters. We think it's just completely irrelevant,  
20 unrelated.

21 Then in 2005. There may be some testimony about a  
22 fire in 2005. You heard something about it. Let me talk for  
23 a minute about lightning. I'll say a little bit more about  
24 it.

25 This is the area where the 2005 fire occurred, and

1 you'll see that there are many red pins (pointing). The red  
2 pins signify where lightning struck. There are machines out  
3 there -- there's a company, Vaisala, which can detect -- not  
4 100 percent. And this is important. Which can detect where  
5 lightning strikes and when it strikes.

6 So for this -- and I'll tell you about the circles  
7 for a minute. Here, you will -- you can get a printout from  
8 this company that will say something like 6:22 p.m. and 14  
9 seconds, there was a lightning strike. And they'll give you  
10 a point. They'll give you coordinates. But, really, there's  
11 this circle here, which is a confidence circle; which means  
12 that it's X -- like 90 percent or 95 percent likely that the  
13 lightning struck within the circle. Not 100 percent.

14 And we'll talk about that. Mr. Blackman will talk  
15 about that. And Mr. Hogue, in testimony in trial, will talk  
16 about it. But you can tell a lot more about lightning than  
17 you would think. But you don't know exactly for sure, 100  
18 percent where it is.

19 But the reports of the fire -- the 2005 fire, it's  
20 undisputed, is a lightning fire. And a point that I want to  
21 mention, because it's relevant to the fire that Steven  
22 Hammond lit after that 2005 fire, is as a fire is entering  
23 into different fuel types, where maybe it's moister or for  
24 one reason or another the fire is dying down, the fire just  
25 goes out. And what happens, though, is the pattern of the

1 fire going out leaves some unburned parts. So there will be  
2 little islands or little fingers of unburned area.

3 And so what Steven Hammond did after this fire, he  
4 called Bill Otley, the rancher, to tell him -- and, again,  
5 here's where I think we don't dispute the Government's  
6 position. He called him to say he discovered some fingers.  
7 That's the term that he used. That's why I wanted to explain  
8 it to you.

9 Steve told Mr. Otley that he had burned them. He  
10 said that one of the fires -- that he burned -- one of the  
11 fingers burned through onto Bill's private property. Steve  
12 offered to pay, and Bill said, No problem.

13 2006, the Krumbo Butte fire. Here's a map of --  
14 this is an early map that was used in the case that explains  
15 a lot of the fires. The reason why I want to show you,  
16 though, is much of the Grandad fire that we talked -- that  
17 Mr. Papagni talked about, the Lower Bridge fire, is different  
18 from the Krumbo Butte fire, which is much further north.

19 And here's a picture of all of the lightning on  
20 August 21st, 2006. All of the lightning strikes.

21 We will have people testify about the lightning.  
22 There was lightning everywhere.

23 And this is the Krumbo Butte fire, in red  
24 (pointing), and all of the lightning around there. There is  
25 a photograph, from very far away, of the Krumbo Butte fire on

1 August 22nd.

2 And I want to talk to you about the importance of  
3 lightning and what -- what it means in this sort of setting.

4 This -- this is -- we expect that the Government and  
5 our witnesses will say this. This is not controversial in  
6 any way.

7 It's not that lightning strikes and, boom, there's a  
8 fire immediately. Lightning may smolder, undetected for as  
9 long as several days and/or weeks after a lightning strike  
10 before transitioning to an active wildfire.

11 That means if you -- if -- if you're looking far  
12 away, like that photo that I showed you and there's a  
13 lightning strike, you may not see lightning right away. You  
14 may not see lightning -- I'm sorry. You -- you may not see  
15 the fire -- and by the way, I'm going to misspeak. That was  
16 probably not the first. There's going to be more, and I'm  
17 sorry for that. It's a good thing this isn't evidence, so --  
18 because it's possible I could mess it up. For example, I get  
19 April and August -- there's something -- sometimes that goes  
20 wrong. If I misspeak, I'm sorry. I trust you'll know what  
21 I -- what I mean, and I hope the evidence will come in  
22 exactly right.

23 What fire investigators are instructed to do is to  
24 interview local area witnesses to see if they observe a fire.  
25 Don't trust the machine, interview. And then, finally, to

1 obtain and review lightning detection maps and data for the  
2 last 15 days. Not one day or two days, but 15 days because  
3 of that smoldering effect.

4 And more importantly, the 15-day rule is for all  
5 fires, no matter what the fuel. But for certain fuel  
6 conditions, you would go for 30 days. And you track and  
7 locate all strikes within a one-mile radius of a fire area.

8 You can look for trees. You can see if trees have  
9 been struck. You will see a lot of the information that --  
10 that can be done to determine this. And we'll show you some  
11 in our part of the case.

12 I just wanted to show you one origin and cause  
13 report. I think several will come in in this case.

14 What happens is the experts, the investigators -- in  
15 this case, it's the B.L.M. people, Gary White and John Bird,  
16 they write up a report. This is for the Krumbo fire that I'm  
17 talking about.

18 And sometimes people don't get it right. Okay? In  
19 this case they said they determined that based on the  
20 directional indicators -- and I didn't put this in there  
21 for -- for the mistake. They say, The lack of no evidence of  
22 a lightning strike. But they mean no lightning strike. They  
23 decide that the fire was intentionally set.

24 Later on in this report they say, The records show  
25 that there was no lightning near the origin of the Krumbo



1 Butte fire in the Bridge Creek Road area from August the 19th  
2 through August 23rd. They looked at the records. Well, they  
3 looked at the wrong records. Because there's lightning  
4 everywhere.

5 And there are other mistakes and other problems with  
6 the other origin and cause reports. You will hear us talk  
7 about them. There are many.

8 There are seven trail fires and about nine  
9 ignitions -- separate ignitions, plus a few more. There's  
10 probably 20 origin and cause reports that you'll hear about  
11 from the Government, and we will -- we'll respond.

12 Steven Hammond -- because of this big fire, Steven  
13 Hammond lit some small part on his own property to protect it  
14 from the fire on August 23rd. And he told Mr. Lance Okeson.

15 Mr. Papagni talked a little bit about Brett Dunten  
16 and Ryan Hussey, the firefighters. I don't have their  
17 photos, but I'm sure you'll remember them. And I just want  
18 to say a little bit about what they were doing and how it  
19 fits into this case. There's -- there's something else  
20 that's important, not just the fact that they were there.

21 Okay. This is the Krumbo fire, and that's where  
22 they were, Dunten and Hussey. And they're looking this way.  
23 But as -- as Mr. Papagni said, the area of origin, they  
24 claim, is here. And there's lightning throughout here  
25 (pointing). They're looking on here, saying they see some

1 spots. Those were never tested. They were never  
2 investigated. That -- that -- in our view, you will not find  
3 that significant.

4 But what is interesting about Firefighters Dunten  
5 and Hussey? And this is where the cattle ranching starts to  
6 come into the case. The importance of the fact that this  
7 incident occurred on a working cattle ranch. Because here,  
8 they were told that to take their truck -- they have a fire  
9 truck -- to Lance Okeson. And backfires and burnouts  
10 generally need significant support.

11 When the B.L.M. is out there lighting fires, they  
12 have a drip torch. I'll show you some pictures. They, as  
13 you heard, lit miles of road on fire at Bridge Creek Road.  
14 They generally need support.

15 You'll hear about a plan on August 24th -- not  
16 directly related to the fires you've heard about here. But  
17 the B.L.M.'s plan would require, for that burnout operation,  
18 four engines and water tender before they would be allowed to  
19 burn out, or before the plan would have them burn out. And,  
20 of course, it could be dangerous.

21 Dunten and Hussey -- Lance Okeson was going to light  
22 his fire on Bridge Creek Road, and they couldn't find him.  
23 And they had to abort.

24 And here is a -- I'll blow it up in a second. It's  
25 an incident card. It's like the communications record. And

1 you'll see here, 426 was Dunten and Hussey's number. And  
2 you'll see that this card shows -- which is, again, in  
3 evidence, that they're going to go over to -- bump over to  
4 Okeson's fire, to help him do some burnout. But they can't  
5 find him. They're unable to contact Okeson.

6 Again, they say, Be advised. We have no contact  
7 with Okeson. We'll try for another half-hour. And then they  
8 abort, and then they're still trying to reach him.

9 Another thing that's important -- Mr. Papagni also  
10 mentioned this -- is relative humidity, RH. It's important  
11 for backburning.

12 And on the evening of August 22nd, which is when  
13 Mr. Okeson and Mr. Glascock -- and Mr. Blackman's going to  
14 say a lot more about this.

15 On the evening of August 22nd, when they were  
16 backburning -- before they did so, the incident commander,  
17 John Petty who was the commander at the time -- Toney, I  
18 think, became later, on the 23rd. He predicted the relative  
19 humidity for that night at 35 to 50 percent. Relatively safe  
20 for backfiring.

21 But this is the -- I'll show you two: The Moon  
22 Hill -- there are two weather stations that are near there.  
23 One's at Moon Hill, the other is at Pete Hill.

24 Remember, the predicted relative humidity was 35 to  
25 50 percent, but at six o'clock it's at 4 percent. Amazingly

1 low at the time they started their backburn.

2 At Pete Hill or Frenchglen, same thing. Predicted  
3 35 to 50. Here, under 4, at six o'clock. Under 4 percent  
4 relative humidity. Extremely dry.

5 So as I said, Dunten and Hussey had to abort their  
6 plan. Weather conditions were extremely dry, but they burned  
7 anyway.

8 And I'm just going to briefly talk about where they  
9 burned and why it's important, but let me just talk a little  
10 bit about Lower Bridge Creek.

11 This is a photo taken, I think, by Mr. Okeson of  
12 what was going on in Lower Bridge Creek. And important for  
13 the Hammonds, because this is a cattle ranching operation,  
14 there's fire and cattle. So it was a potential catastrophic  
15 situation for cattle ranchers.

16 And so what happened was the Hammonds had to act  
17 in -- in a way -- and, again, Mr. Blackman will say this, but  
18 I'm just going to say a few things. And we'll have an  
19 expert -- Mr. Steninger, talk to you about cattle ranching.  
20 He knows way more than we do.

21 And he will tell you, and the records show, that in  
22 a cattle ranching operation, with the government, you just  
23 don't have cattle that you can go to at any time. There's a  
24 rotation. That you go from one allotment to the other, to  
25 the other. You may move on June 4th, 200 cattle from here to

1 here. On June -- or on July 15th, et cetera. And we'll talk  
2 about that later, in more detail.

3 But what's happening is the Hammonds are moving  
4 their cattle essentially this way, from here to here  
5 (pointing).

6 There's Lower Bridge Creek fire, and they're going  
7 this way. And what happens is -- this is Bridge Creek Road.  
8 And the Hammonds are moving their cattle. And Mr. Blackman  
9 will say it more. They're originally going to go here, in  
10 the fire, but then they have to go here. And the point is  
11 that they're moving from there to there (pointing). And this  
12 is not the backburn on Lower Bridge Creek Road, but I wanted  
13 to show you what a backburn looks like.

14 These are firefighter -- firefighters using drip  
15 torches and other things to burn the mountain. Reminds me a  
16 little bit of E.T. But it's a scary sight.

17 And the important thing is, again, where they're  
18 burning. As I showed you on the map, they're burning right  
19 there, (pointing) right in the path of the cattle.

20 And so it's in this context that when Steven  
21 Hammond, my client, goes to Joe Glascock and they're saying  
22 he's tampering with a witness, he's just seeing them burning  
23 his -- right in the wrong spot, and he's upset. And that's  
24 when he says, I'm going to say you lighted those fires, not  
25 me. Because they did.

1 I'm going to let Mr. Blackman talk now. But we're  
2 confident that you'll find Steven Hammond, Dwight Hammond not  
3 guilty of all charges by the time you're done.

4 THE COURT: Mr. Blackman.

5 MR. BLACKMAN: Your Honor, we have different laptops,  
6 and it's going to take me a couple of minutes to switch.

7 MR. MATASAR: Can I assist you here?

8 THE COURT: Fine. We'll just take a short recess  
9 where we are. If you want to stand and stretch, fine.

10 MR. BLACKMAN: Ladies and gentlemen, if I addressed  
11 you from here, would that be okay with you? If I stood this  
12 far back, can you hear me okay? And do you mind if I --

13 THE JURORS: (Nod heads.)

14 THE COURT: Okay. We'll go back on the record.

15 MR. BLACKMAN: May it please the Court, counsel,  
16 ladies and gentlemen. My name is Marc Blackman. I represent  
17 Dwight Hammond. And before I actually get to what I believe  
18 the evidence in this case is going to show, I do want to talk  
19 about a few kind of basic things.

20 As the judge told you in the preliminary  
21 instructions, the burden of proof is on the Government. And  
22 Mr. Papagni correctly embraced that proof. One of the  
23 consequences of the Government having the burden of proof in  
24 a case like this is that it gives them the opportunity to go  
25 first. And although it's good that they have the burden of

1 proof, if you're the defendant, it is sometimes difficult to  
2 believe the jury can really wait until they've heard all of  
3 the evidence, as the judge instructed you. Heard all of the  
4 witnesses, had a chance to see what -- I think you can get a  
5 sense already -- are going to be voluminous number of  
6 documents and evidence before you even begin to think what  
7 does all of this mean.

8           And so my request to you, on behalf of Dwight and  
9 Steven Hammond, is that you take the judge's admonition very  
10 seriously, and that you don't even begin to think about what  
11 does any of this mean until you've heard all of the evidence,  
12 both sides of the story; not the first few witnesses or the  
13 first opening statement.

14           Okay. The other thing I want to talk a little bit  
15 about is what opening statement really is about. And it is a  
16 prediction by the lawyers as to what the evidence will be.  
17 Lawyers try to prepare for their cases. They try to know  
18 what the facts are going to be. But they can't always get it  
19 right. And so what I say, what Mr. Papagni says, what  
20 Mr. Matasar says, it isn't evidence. It is to give you a  
21 framework, hopefully a helpful framework, so that when you  
22 begin to hear the evidence -- because this is not really a  
23 conversation. A trial is not like a conversation. It's not  
24 like you can sit there and say, Well, what about this? What  
25 about that? And have Joe say this at this point, and at the

1 same time, Bill says this and Sue says that. We have to hear  
2 witnesses one at a time.

3 And sometimes somebody has a little piece of this  
4 and a little piece of that. And somebody else will have a  
5 little piece of this and a little piece of that. And it's  
6 like giving -- giving the jury a bunch of jigsaw puzzle  
7 pieces and saying, Okay, you know, without looking at the  
8 cover of the box, what is this picture?

9 So you have to -- and I ask you please to do that.  
10 Because Mr. Papagni is suggesting the Government's going to  
11 take the balance of this week and next week to present  
12 witnesses they will call. That means it will be quite a  
13 while before you hear the witnesses -- for example, Rusty  
14 Hammond, Jacon Taylor, the Gustafsons, Scott Gustafson, about  
15 what really happened in 2001 in that hunting party. It could  
16 not be different from the way it's been portrayed by  
17 Mr. Papagni.

18 Now, that's not to say that Gordon Choate is not  
19 going to come in here and wow you. It's just that Gordon  
20 Choate is their version of what happened. And you're going  
21 to hear that first.

22 But our version of what happened, which is verified  
23 as Mr. Matasar pointed out, by contemporaneous records, just  
24 couldn't be more different. And Dusty Hammond couldn't be  
25 more wrong; just about who was there, when, what, everything.



1 So please keep an open mind.

2 The other thing I want to say is I represent Dwight.  
3 I don't represent Steven. They're father and son, but  
4 they're two different people. I'm going to bring out what I  
5 can, that I think is relevant to this case with respect to  
6 Dwight. Mr. Matasar is going to do that on behalf of Steven.  
7 And because they're both named Hammond, I'm probably going to  
8 occasionally refer to my client as Dwight, as opposed to  
9 Mr. Hammond, just so it's clear who I'm talking about.

10 It's not because I'm trying to familiarize myself to  
11 you or anything like that. It's just for clarity's sake.

12 Mr. Matasar and I are going to try to work together,  
13 so that if he takes care of an issue, I don't have to do it.  
14 If I take care of an issue, he doesn't have to do it. So you  
15 don't have to hear everything twice.

16 But if there's something that Mr. Matasar asks about  
17 that relates to Dwight Hammond and I don't ask it, please  
18 don't think that it doesn't apply to Dwight Hammond, and vice  
19 versa. If I ask something that relates to Steven, please  
20 recognize that that is just because it's all in many cases  
21 wound up together.

22 Then I guess the other thing I want to say, before  
23 we really get to the facts here, is that what I'm going to  
24 focus on in my part of the case, in my part of the opening  
25 statement, is 2006. Because that's where we believe if

1 there's any basis at all for having a rational way of  
2 figuring out what happened, it's there. '01, we believe,  
3 it's just -- there's just nothing there.

4 And I'm going to try and tell you what we expect the  
5 evidence to show in some detail, and I hope I get it right.

6 The first thing we really do have to say is that  
7 we're talking about a vast area. This map, which will be  
8 coming into evidence, is simply the area where the Hammonds'  
9 ranching operation occurs.

10 Mr. Steninger will explain it in detail. I'm not  
11 going to try and do that. Mr. Matasar made references to the  
12 different pieces of the puzzle. Some of it is private land.  
13 Some of it is public land which they lease under grazing  
14 permits with the B.L.M. Some of it is a combination of both  
15 of these.

16 There's also -- this is very rugged terrain. And  
17 maybe you guys all understand the ruggedness that can be the  
18 lay of the land in -- in Southeast Oregon. But just in case  
19 you don't, this is rugged territory.

20 And although you can't see from where you're  
21 sitting, probably, we've got this topographical stuff that  
22 shows you the elevations, and you can get a sense of how much  
23 up and down and gradual rise and -- and the elevation that  
24 takes place here.

25 The things that are rugged are not just the terrain

1 but the way you get around it. They call things roads on  
2 Steens Mountain that wouldn't pass for -- I don't know what  
3 to -- word to use. Almost anywhere else.

4 And so when we talk about something like Bridge  
5 Creek Road, it's really important not to picture Highway 205,  
6 which goes south on the west side of this area. Or even an  
7 alley. It's, at best, an eight-foot-wide, partially catted  
8 out rocky, weedy thing. That if you tried to take  
9 something -- a normal vehicle up on those roads, you wouldn't  
10 get very far. Which means something else. Physical  
11 distances on the Steens Mountain are much longer than the  
12 mileage, because you can't go 20 miles an hour. You are  
13 lucky if you can go seven. And timing in this case is going  
14 to be pretty important in a lot of ways.

15 So it's important to realize that when you're  
16 talking about going two miles, if you're talking about two  
17 miles on Bridge Creek Road, you're not talking 20 minutes.  
18 You're talking a couple hours. Okay? So that's the basic  
19 lay of the land. I guess literally the lay of the land.

20 So now I want to talk a little bit about the setting  
21 in which the events of August 20th, 21st, 22nd, 23rd, and  
22 24th took place. That is what I think the heart of this case  
23 is about, and that is what I think Mr. Papagni may have made  
24 some predictions that, if you keep your minds open, you will  
25 find just don't play out.

1           This really began, in terms of evidence in this  
2 case, by a really funny, happy coincidence. Which is to say  
3 that a guy named Hank Vogler, an old, old friend of the  
4 Hammond family, happen to be in Oregon where he grew up, in  
5 Burns, but hasn't lived for a long time. He's a cattleman  
6 and a sheep man in Nevada now. Has been for many years.

7           But by coincidence, in August he had a family  
8 wedding in Oregon, and he was up here with his fiancée at the  
9 time -- now his wife -- his kid. And he was hoping to meet  
10 his daughter, who lives in Grants Pass, and pick up his  
11 granddaughter, and have a little visit while he was up here.

12           So on the 20th of August, the wedding behind him,  
13 Mr. Vogler comes to the Hammond ranch.

14           He's met his daughter, picked up his granddaughter,  
15 Racine (phonetic). He's got his son. He's got his fiancée  
16 with him.

17           The idea is he's driving back to Elk Grove, but they  
18 want to visit with the Hammonds. So they get there on the  
19 afternoon of the 20th of August. And the idea is he'll spend  
20 the evening, catch up, and head off the morning of the 21st.

21           Well, it's a beautiful place. And as dangerous for  
22 fire as it is when it's really hot and dry, if you're a kid  
23 and you're on a ranch that has beautiful reservoirs, it's a  
24 great place to be.

25           So what happened was on the 21st, Racine convinced

1 Mr. Vogler to let them stay an extra day. She wanted to go  
2 swimming in the reservoir. And so that day, August 21st, in  
3 the afternoon, the Hammond kids, the Voglers, and the  
4 granddaughter go swimming in Krumbo Reservoir. Which is on  
5 this map over here somewhere (pointing).

6 Here's -- Krumbo Reservoir is just above the Hammond  
7 ranch, right there (pointing).

8 They're having a great time, but Susie Hammond has a  
9 rule. Mr. Vogler will tell you that she has a rule. And  
10 that rule is what she calls three strikes and you're out.  
11 Three lightning strikes, and you get out of the water.

12 And sure enough, that afternoon, while the kids are  
13 swimming in Krumbo Reservoir, the three strikes are seen.  
14 Kids are told to get out of the water, and they do.

15 And you've seen this in Mr. Matasar's opening. But  
16 this is the lightning activity on the afternoon of the 21st  
17 of August from Frenchglen to Krumbo Butte. Scores of  
18 recorded lightning strikes.

19 And we know that there was not just lightning but  
20 that the lightning started fires, because people started  
21 calling in.

22 And we have Jody Starbuck, who will be called as a  
23 witness, who was down in -- near Frenchglen, working with her  
24 husband, Wade, haying when she sees lightning hit the ground  
25 to the east and start a fire. And she calls it in.

1           And I'm going to play that call, which took place at  
2   3:30 or 3:45.

3           She actually called twice. Those little icons on  
4   this display here, the little speakers, each represent a  
5   different call. It's getting late. I'm only going to play  
6   the second call. Okay? But she calls the second time.

7           Come on.

8           (Pause, audio playing and not transcribed herein.)

9           MR. BLACKMAN: And they did have a bunch of stuff.  
10   Because in addition to the lightning that is in this image,  
11   lightning was hitting at Craters. It was hitting down at  
12   Fields, which is just south. Craters is just west. It was  
13   hitting north. There was fire started by lightning all over  
14   the countryside.

15           The fire that Jody saw is in this picture. And you  
16   will hear testimony from Roy Hogue, who is our fire cause  
17   expert in this case -- who you won't hear until the very near  
18   end of the case because of the way these things happen. But  
19   he went out, after the Indictment in this case, and he went  
20   to the scene that was described by Jody Starbuck in her phone  
21   call. And he walked that territory. And guess what? That's  
22   what he found. The lightning struck a tree right where Jody  
23   saw the fire take off. And that was in the late afternoon of  
24   the 21st, just when the kids are getting out of the water and  
25   coming back down to the ranch house.

1           So meanwhile, back at the ranch, the Hammonds are  
2           hosting the Voglers and Steve Hammond and his family for  
3           dinner that night. I think this may be important because I  
4           think Mr. Papagni -- he made some suggestion that the  
5           Hammonds -- Steven and Dwight, the defendants in this case --  
6           did something with respect to the fire at Bridge Creek Road  
7           on the night of the 21st. That's what I heard him say.

8           This is Susan Hammond in her kitchen. That gray  
9           thing with the black in the middle of it turns out to be a  
10          digital clock. Which -- I'm not very good at doing this, but  
11          I was able to blow up. And if you look closely -- and it's  
12          not just my imagination -- you will see that the date on that  
13          clock is 8-21-06. This picture was at 6:15 in the evening.

14          And thank goodness for Mr. Vogler having taken a  
15          bunch of pictures of the visit to the ranch, he took a  
16          picture of Mr. Dwight Hammond with his grandson. He took a  
17          picture of Steve getting the kids ready for dinner. Steve  
18          Hammond is there, to the far left. So we know where Steve  
19          and Dwight Hammond were.

20          And if you look at the clock on the back of this  
21          picture -- again, on the board it's not so good but on your  
22          screen it's pretty good. You can see this is at nine  
23          o'clock. The picture with Susie in it is at 6:15. So we  
24          know where the Hammonds are on the night of the 21st.  
25          They're at home with the Voglers.

1           Now, the lightning has started fires all over the  
2 countryside. And what the evidence is going to show is that  
3 at about 11:45, George Orr, one of the Government  
4 investigators, law enforcement guy, was called to go down to  
5 the Fields fire, which was about ten miles south of  
6 Frenchglen.

7           And about 11:45 that night, George Orr, who we  
8 believe the Government will be calling as a witness, is  
9 driving past Frenchglen and sees to his left -- in other  
10 words, to the east -- what he describes as heavy smoke and a  
11 big fire. That's in the Lower Bridge Creek area. Okay?  
12 That's here (pointing). That fire is going.

13           The next morning the Voglers are still at the  
14 Hammond ranch. And Mr. Vogler can't be quite sure what time  
15 of day they left, but we do know this. Just as he crossed  
16 into Nevada, he got a speeding ticket. One of the few times  
17 I'm glad somebody I have some need to know got a speeding  
18 ticket. And he got a speeding ticket at 9:40 a.m. on the  
19 22nd.

20           We know he left the Hammond ranch -- we know it's  
21 about 75 miles from the Hammond ranch to where the milepost  
22 on this highway is made up on the ticket.

23           I covered it up here just because it's a little  
24 embarrassing to Mr. Vogler with my notation there. But what  
25 that ticket is going to show you is that he was doing 90. So



1 what we believe that's going to tell you is he left the ranch  
2 after eight o'clock in the morning. Probably closer to 8:30.  
3 He'll do his best. You know, it wasn't a big deal at the  
4 time. But we believe it's going to show that he was at the  
5 ranch until well after 8:00. Dwight Hammond was there, being  
6 a good host. Steven Hammond was there, having breakfast,  
7 saying good-bye.

8 That's important in this case, I believe you will  
9 find, ladies and gentlemen, because of the timing of what the  
10 Government's trying to claim about the Lower Bridge Creek  
11 Road. What they're now calling the Lower Bridge Creek fire.  
12 Which until the Indictment in this case was called the  
13 Grandad fire. Part of the same single incident that they've  
14 now tried to tell you is two different things.

15 What we know is that they didn't leave the house  
16 that morning until Mr. Vogler had already left. We believe  
17 the -- the best evidence is going to be that's close to 8:30  
18 in the morning.

19 We also know -- this was a photo that Mr. Matasar  
20 showed you in his opening. That photo was taken, I believe,  
21 by Joe Glascock, the range guy. Who we know at some point  
22 that morning was in the Lower Bridge Creek area, checking it  
23 out. He's making it sound like it was much earlier than we  
24 believe it was. And we believe that's going to be very  
25 important evidence.

1 But he took a picture of two -- what we believe are  
2 bulls. Although, it's not the greatest photograph in the  
3 world. And you can see that there's fire behind them.  
4 Because guess what? That is exactly the pasture that  
5 they're -- the Hammond herd, 374 cow/calf pairs, if I may so  
6 disclose, were in the low -- Lower Bridge Creek field, in  
7 that allotment, at that time.

8 And what the evidence is going to show is that  
9 morning Joe Glascock calls Steve Hammond. And what he tells  
10 him on the message -- which is still on their answering  
11 machine -- is there's a fire down in Bridge -- Lower Bridge  
12 Creek. There's some cattle in there. They're skunking  
13 around. Not doing too much. But, he says, if the  
14 temperature goes up, humidity goes down, it could take off.  
15 Now, we have that. We'll play it for you during the trial,  
16 when Mr. Glascock is here.

17 What we also know is that early in the morning --  
18 and I think the Government -- the climate guy, who will be  
19 called, Charley Martin, will tell you, that it's not uncommon  
20 at this time of the year, in this area, for there to be an  
21 inversion. That's where the cool air of the night settles  
22 over the warmer air. Sort of reverses the standard  
23 arrangement. And as Mr. Matasar said, a lightning-struck  
24 fire can smolder. Well, an inversion can hold down the fire  
25 until -- guess what? It gets warm and dry.

1           And you have seen this. Exactly what happened later  
2 that morning. Not very late that morning, on the morning of  
3 the 22nd. By about -- I wrote it down. At eight o'clock in  
4 the morning, the temperature was 65 degrees. At noon, it was  
5 84. At 8:00 a.m., the humidity was 30 percent. At noon, it  
6 was 5 percent.

7           So what we know is that over the course of that  
8 morning that inversion breaks. And I believe it will -- I'm  
9 certain Mr. Hogue can tell you -- that it creates a chimney  
10 effect. Just -- when that -- the sun burns through the --  
11 the cooler air, it creates a chimney, and the fire just hits.

12           This is the map you'll hear so much about you will  
13 hate us all. Of where the gates and fences in this vicinity  
14 are. Because this is what contains the cattle and how you  
15 have to move them by opening the gates, getting them along  
16 the fences to get them to move.

17           What everybody knew is that the Hammonds' cattle  
18 were down there because that was the schedule that had been  
19 set earlier in the year. I believe Mr. Glascock will tell  
20 you that before the grazing season begins every year, they do  
21 a schedule, a grazing schedule. Where the cattle are going  
22 to go, from where to where, and when.

23           So this is one pasture. This is another, another,  
24 another, another. And you go down here. Okay. And it has  
25 the dates that the cattle are allowed to graze.

1           So I think Mr. Glascock will confirm to you --  
2       excuse me -- that in '06, because it was a really late  
3       spring, everything got pushed back a couple of weeks.

4           So, for example, in the Krumbo Creek, where they  
5       were supposed to go April 1st, they really didn't go in until  
6       April 20th. And then they were there until May, whatever.

7           So they had moved into the lower field of Mud Creek  
8       allotment, instead of in early July, in -- in late July. And  
9       into the upper field in August. So that's where their cattle  
10      are when this fire is taking off.

11          So this is what they do on the morning of the 22nd.  
12      Voglers leave. Steve Hammond, Dwight Hammond, and Steve's  
13      kids get on down there so that they can open the gates and  
14      begin to move their cattle out of harm's way to where they're  
15      next scheduled to go, which is the Bridge Creek pasture of  
16      the Hardie summer allotment.

17          I know this means nothing to you now, and I  
18      apologize. But I want you to hear it now because you're  
19      going to hear it a lot, and maybe it will ring a bell.

20          And that's what they're doing out there. They're  
21      getting their cattle out of harm's way.

22          Mr. Papagni suggested in his opening statement that  
23      the fire was not doing nothing when they got done. Well,  
24      that's not -- when you listen to Mr. Glascock's message,  
25      that's not what I believe you will hear him saying.

1           More importantly, he mentioned Ms. Elshoff. She's  
2 the refuge volunteer. She'd been working with her husband  
3 Cal the day before, and had left some equipment down at the  
4 refuge. And I believe her testimony will be that that  
5 morning, on the 22nd, she got a call -- I forget the name of  
6 the guy who called -- to report that the fire had jumped the  
7 creek already. Jumped the creek. And they might want to get  
8 down there to get the equipment out of the way. And that's  
9 what's going on.

10           What's also interesting -- and I believe this will  
11 come in through Mr. Toney. Certainly Mr. Glascock -- it  
12 wasn't only the Lower Bridge Creek area that the fire was  
13 suddenly much greater in the morning of the 22nd, but  
14 there -- the fire in the division E-Complex -- they give  
15 these locations different names. And what a complex means,  
16 as I understand it, is -- you know, it's not like a unitary  
17 thing. You've got fire here, you've got a fire here, you've  
18 got fire here. And you treat it, for administrative  
19 purposes, as a unit. It's called a complex. So it's a  
20 collection of a bunch of fires.

21           So in E-Complex, which was six miles west of Fields,  
22 at 1:00 a.m. on the 22nd -- so this is early, early in the  
23 morning. Just when Mr. Orr is seeing the big fire at  
24 Frenchglen, the fire at six miles west of Fields is described  
25 as rapid rates of spread, 20- to 30-foot flame lengths.

1           The division C-Complex, which is 20 miles southwest  
2 of the Narrows -- which is right in that area as well --  
3 rapid spread through tall brush, spotting, running 6- to  
4 20-foot flames.

5           The division F, which is our fire, is where George  
6 Orr sees the big fire.

7           So that fire is a major fire, ladies and gentlemen.  
8 The night of the 22nd -- excuse me. The early morning of the  
9 22nd, through the morning of the 22nd. And the Hammonds are  
10 out there for a legitimate reason: To get their cattle out  
11 of harm's way.

12           And to get their cattle out of harm's way as they  
13 are scheduled to do by moving -- although not as scheduled  
14 because this -- we have the emergency -- out of the lower  
15 field, up to the Hardie summer allotment, the Bridge Creek  
16 pasture No. 3.

17           Okay. (Pause, referring.) This is a sketch that is  
18 actually taken off of this big map -- that's been sitting in  
19 front of you this whole time -- that shows the movement of  
20 the cattle on the 22nd.

21           They have opened the gates. They're getting the  
22 cattle up, over, across the upper field. This is the upper  
23 field of the Mud Creek allotment. That's the lower creek.

24           Moving them over here, to where they're supposed to  
25 go next, which is up here, this Hardie summer allotment,

1 right in there.

2 And guess what that yellow thing right there is?  
3 That's Bridge Creek Road.

4 So they spend the day doing that.

5 Meanwhile, this is what the fire looks like down in  
6 Lower Bridge Creek.

7 This was taken by the B.L.M., from Pete Hill, which  
8 is by Frenchglen, at 3:40 in the afternoon on the 22nd. And  
9 you can see, it's a major fire.

10 So we're now -- again, that major fire derived from  
11 that same tree we've talked about.

12 Now we get to Mr. Okeson and Mr. Glascock's decision  
13 to rendezvous up at Antelope Reservoir, as you've heard,  
14 where they decide to do a backburn along Bridge Creek Road.

15 And what the evidence is going to show, ladies and  
16 gentlemen, is that at the time -- I don't think either of  
17 them is going to say this at trial. But at the time, they  
18 reported that they used drip torches -- which we've seen a  
19 picture of -- to light from a point north of where Knox  
20 Springs Road Ts into Bridge Creek Road, about a half-mile  
21 north of that. Using their drip torches, starting at 5:30 in  
22 the afternoon, burning for four-and-a-half hours; going  
23 south.

24 And as Mr. Matasar pointed out, even though they  
25 couldn't make contact with their water support, their

1 protection, they did it anyway. And what they're going to  
2 testify at trial is that they burned on the west side of  
3 Bridge Creek Road.

4 What the reports say they said at the time, when the  
5 investigators for the Government came in later to try to  
6 figure this all out, was that they burned on the east side of  
7 Bridge Creek Road.

8 And as you can imagine, assuming Bridge Creek Road  
9 is anything -- and I do have some pictures here, but I guess  
10 I'm not going to bother showing them to you. This eight-foot  
11 dirt division would be any kind of fire break at all. If  
12 you're -- if the fire's coming from the west, it might burn  
13 on the west side to try to stop it. And that may be what  
14 they intended to do. But what they said they did was burn on  
15 the east side, which is the side that would advance the fire.

16 And what the evidence will show is that they did  
17 that for four-and-a-half hours. And what they reported at  
18 the time was until they ran out of fuel.

19 And what you will see, ladies and gentlemen -- and  
20 Mr. Hogue, I think, will explain clearly -- is that the fires  
21 that the Hammonds are accused of setting -- what are called  
22 Ignitions 2, 3, 4, and 5 along Bridge Creek Road -- all of  
23 those ignitions are directly across Bridge Creek Road from  
24 the west side; if you give them credit for burning on the  
25 west side of where they did their torching on the night of



1 the 22nd, when the temperature and humidity were just  
2 extraordinarily volatile.

3 They quit about ten o'clock, went back to Antelope  
4 Reservoir, and then -- the evidence is going to show -- and  
5 this is what it looks like, by the way, about where they  
6 stopped the night before and started the morning after.

7 Mr. Okeson went back up to Antelope -- up to Moon  
8 Hill, excuse me, to get more fuel to burn more. Even though  
9 they said that they quit because they ran out of fuel, what  
10 Mr. Glascock did was went back to where they stopped, and  
11 burned again. We don't know -- we'll find out in trial --  
12 what he used, how he did it. Apparently they must have had  
13 some torch fuel left, or something. And he burns for about a  
14 half an hour around a little cabin on the west side. And  
15 guess what? It's directly across the road from what the  
16 Government's calling Ignition 5, trying to blame the  
17 Hammonds. And you will hear that Ignition 5 is in rocky  
18 terrain, very steep and rugged.

19 My client was a bit younger at the time, but not  
20 that much younger. They're going to suggest that Dwight  
21 Hammond hiked up this road with B.L.M. Firefighters Rott and  
22 Megargee coming down behind him. Right? That's their  
23 suggestion. That he ducked over and lit a fire while the  
24 fire truck's 20 minutes behind him.

25 In the meantime, after they -- Mr. Okeson and

1 Mr. Glascock do their burning the night before -- and  
2 Mr. Glascock the next morning -- they rendezvous again, and  
3 they go south about two miles to an area of what they called  
4 a test fire.

5 And the evidence is going to show that by the time  
6 they set the test fire, they were receiving a report from  
7 the -- the commander, saying that the weather conditions were  
8 extremely volatile and dangerous. That was at 8:40 in the  
9 morning. And they lit the fire anyway, without the water  
10 support there, again. And that fire again burned out of  
11 control, as did their initial fire at the far north end where  
12 they started.

13 The Government used to call it Ignition 1, and  
14 blamed the Hammonds. They've since withdrawn that  
15 allegation.

16 So what we know is the B.L.M. people were burning  
17 Bridge Creek Road for hours and hours on the 22nd and 23rd.  
18 In the meantime, of course, what happens on the evening of  
19 the 22nd -- or afternoon -- is that Mr. Glascock calls  
20 Mr. Steve Hammond again and says, Hey, Steve, it's Joe.  
21 We're going to burn on Bridge Creek Road. And just wanted to  
22 let you know -- and you know this country better than me --  
23 I'll tell you where I'm going to be, that area where we did  
24 some blading, just to let you know.

25 Well, guess what? He calls. And what's he telling

1 him? We're about to start fires right where you just moved  
2 your cattle.

3           So guess what they do on the morning of the 23rd?  
4 They head back down there to open the gates and get the  
5 cattle out of the pasture that they were destined for, until  
6 they heard that they were burning Bridge Creek Road, to get  
7 them down to the next place they were due, which is the  
8 north. And that's what they do on the 23rd.

9           Now, after -- and you will see where the gates are.  
10 It gets -- you know, the devil's in the details in this  
11 situation. But there are gates due east of where Lance  
12 Okeson is sitting on the top of the slope there, that  
13 Mr. Papagni told you about. After Rott and Megargee show up  
14 to put out their so-called test fire that had gotten out of  
15 control.

16           And he's sitting up there when he says he sees  
17 Dwight Hammond coming out from the east. And it's true. He  
18 did.

19           Now, what is different is that Mr. Okeson -- we  
20 believe the evidence will show -- his identification was  
21 identified by Joe Bates, the pilot that Mr. Papagni mentions  
22 here. The location Mr. Bates puts Mr. Okeson at is about  
23 four football fields from where Dwight Hammond was walking  
24 across that road. He couldn't see clearly anything of what's  
25 happening, other than Dwight crossing that road.

1           And then after they had their -- he confronts him,  
2 and Dwight says, Come on up to the house, and we'll talk this  
3 out. He sees a footprint, and he puts boulders around the  
4 footprint. And that's true. And later that afternoon, that  
5 very afternoon -- I guess it was Dave Glerup. We thought it  
6 was George Orr -- comes in and takes a photograph of that  
7 boot print.

8           It is probably Dwight Hammond's boot print. We'll  
9 have to wait until they testify to understand why they didn't  
10 have a ruler to tell us how long that boot print was. They  
11 used a pen. It's the only standard we have to try to guess  
12 what that boot size is. But what we can tell from this  
13 photograph, which is the best photograph I think in this  
14 case, is that it's a very pointed-toed boot. And we believe  
15 you will find that it does match Dwight. We've had his feet  
16 measured and drawn. And you'll see that.

17           And Dave Freeman, our investigator, will tell you  
18 how he took these images to figure out what size boot print  
19 Dwight has.

20           The next morning, the 24th, after Steve Hammond  
21 meets with Joe Glascock at the Frenchglen cafe in the  
22 morning, Sheriff Glerup is waiting for him, follows him up  
23 the North Loop Road, pulls him over, and tells him he's under  
24 arrest for setting fires. This is sometime after 8:35 in the  
25 morning.

1           And what we know is that Mr. Hammond has somebody  
2 following him, who are fencing contractors, who are going to  
3 start repairing fences.

4           And so Mr. -- or Sheriff Glerup said, Okay, go ahead  
5 and take care of your animals and your fencing, but I want  
6 you and your dad to turn yourselves in by one o'clock this  
7 afternoon at the Harney County Sheriff's office.

8           And they do. 1:15. But it's close. All right.

9           What's important about that is -- what it tells you  
10 is that Steve Hammond is hours away from Burns, where the  
11 Harney County Sheriff's office is. He has to go to the  
12 ranch, and pick up his dad. So that's what they're doing,  
13 that morning. And then they're under arrest. Okay? Charged  
14 with starting fires.

15           That afternoon, another investigator goes to the  
16 scene where Mr. Okeson says he crossed paths with Mr. Dwight  
17 Hammond, and they see a footprint. They can't find the  
18 footprint that was photographed the day before by, I guess,  
19 Sheriff Glerup, but they find another one that Mr. Okeson  
20 says that's the same -- Dwight Hammond made that footprint.  
21 And they measure it. And that footprint is 14 inches long  
22 and 5 inches wide. And to the extent you can tell, the toe  
23 is round.

24           We know, of course, that they then searched the  
25 Hammonds' house. They do not find boots that match the

1 description of the boots they're looking for. That's on the  
2 26th.

3 And then on the 3rd of September -- Mr. Papagni  
4 glossed over this entirely. Actually, on this one -- on the  
5 2nd of September, during an aerial surveillance, B.L.M.  
6 seized a set of little ignitions, that they mapped on the  
7 trail fires, that had not been ever noticed before. And it's  
8 near Bridge Creek Road, to the east. Sort of not far from  
9 the Ignition 5, or what they call Ignition 6.

10 So the next day a bunch of investigators go to that  
11 scene, and the first thing they find when they come off of  
12 the road is a boot print and, what's called, a BK radio tag  
13 lying adjacent to it.

14 And they map the whole thing. And all of the  
15 footprints they see and all of the fires that they see there,  
16 they do this nice little sketch. And that BK radio tag is  
17 adjacent to that very first footprint that they're seeing.  
18 And that's a photograph -- again, not the world's greatest  
19 quality image. But 14 inches, 5 inches wide. And there's  
20 that little tag they find next to it. They turn it over.  
21 It's a BK radio.

22 What the evidence in this case is going to show,  
23 ladies and gentlemen, is that the only people who carry BK  
24 radios -- they're a fancy digital radio -- are B.L.M.  
25 personnel.

1           That BK radio tag was recognized by the  
2 investigators on the scene as very significant evidence.  
3 Potentially very significant evidence. They seize it.  
4 They -- the fire investigators, I think, will testify -- at  
5 least they did in a previous hearing -- that they seized it  
6 to turn it over to law enforcement, to make appropriate use  
7 of it in finding out what was the cause and origin of these  
8 fires.

9           What the evidence is going to show is that we don't  
10 know what happened, other than a BK radio tag was -- after  
11 the defense asked for it, when we discovered this in the  
12 discovery in this case -- a BK radio tag was found in a box  
13 of stuff in the B.L.M. office in Burns in March of this year.  
14 And nothing had ever been done.

15           Assuming the BK radio tag that was found in that box  
16 is the one pictured here, it was never tested for  
17 fingerprints. It was never tested for DNA. It was never  
18 tested for anything that might take us somewhere, in terms of  
19 what would account for that BK radio tag being adjacent to  
20 that footprint at the site of the trail fires.

21           But what is significant is that footprint, at the  
22 trail fires, is identified by the Government and the origin  
23 and cause investigators as similar to the footprints found at  
24 Ignitions 6, 7, 8, 9. Therefore, the person who made that  
25 footprint is responsible, if -- and we don't think the

1 evidence will even show that these were anything more than  
2 spotting fires from the fires that were burning all over the  
3 place. But if they weren't, the person whose footprint --  
4 the person who made that footprint is the person who made  
5 those other fires.

6           What we believe you will find, when you look at all  
7 of this evidence, is that is not the footprint of Dwight  
8 Hammond. And if he didn't make that one, under the  
9 Government's theory, he didn't do any of them.

10           So I've talked forever, and I hope you don't mind  
11 the detail I went through.

12           But I think you will find, when you have heard all  
13 of the evidence, that what the Government is trying to  
14 portray as some kind of malicious misconduct couldn't be  
15 anything further from the truth. That you have the history  
16 of people -- yes -- wanting to control the -- the invasive  
17 species on their land. Yes, believing that fire -- just like  
18 everyone down there believes fire is good. Everyone believes  
19 that it's necessary to control.

20           I think the evidence will show that because there's  
21 been -- for -- there were many years when all fires were  
22 viewed as bad. What that did is it gave the juniper, which  
23 is this terribly invasive species that just sucks the life  
24 out of the native plant, spread like crazy. And it was -- I  
25 almost said "wildfire."



1           And I think everybody agrees that's bad. It's bad  
2 for the sage grouse because of the sage. It's bad for the  
3 deer. No place to hide. It's not good for the cattle,  
4 either.

5           So there's an interest in returning the Steens to  
6 the native habitat. And everyone recognizes that fire is a  
7 good way to do that.

8           And the Hammonds made no bones about that. That's  
9 why they called in advance in '99. They called in advance in  
10 '01. That's why when they cleaned up the fire in '05, they  
11 called Mr. Otley, to let him know.

12           But that is the complete reverse of suggesting that  
13 they maliciously were setting fires for any purpose. They  
14 just weren't.

15           So please keep your minds open. I won't say it  
16 again. And thank you for your patience in listening to my  
17 very over-long opening statement.

18           Thank you.

19           THE COURT: Thank you.

20           Off the record a moment.

21           (Pause, the Court and the court reporter  
22 conferring.)

23           THE COURT: Members of the jury, do any of you need a  
24 break right now?

25           All right. Okay.

1 (Pause.)

2 THE COURT: Mr. Papagni, please call your first  
3 witness.

4 MR. PAPAGNI: Call Mr. Thomas Dyer, please.

5 He should be outside the courtroom.

6 THE CLERK: Please raise your right hand.

7 (Witness sworn.)

8 THE WITNESS: So help me God.

9 THE CLERK: Please have a seat.

10 Please speak into the microphone, and there's water  
11 here, if you would like some.

12 Please state your full name, and then spell your  
13 name for the record.

14 THE WITNESS: Thomas H. Dyer. T H O M A S. H.  
15 D Y E R.

16 DIRECT EXAMINATION

17 BY MR. PAPAGNI:

18 Q. Sir, you're retired now, aren't you?

19 A. Yes.

20 Q. And before you retired, sir, what did you do for a living?

21 A. I worked for the Forest Service and the Bureau of Land  
22 Management for 35 years.

23 Q. In that regard, sir, I want to direct your attention back  
24 to the -- some time ago, back into 1999 time period.

25 And before court today, you had a chance to look at

1 some documents, did you not?

2 A. Correct.

3 Q. And back in 1999, sir, what was your job back then?

4 A. I was the -- from the -- the district manager, starting in  
5 the spring of '99, through 2000 -- through the fall of 2003.

6 Q. And when you were the district manager, briefly describe  
7 what some of your duties were.

8 A. Well, first I had the responsibility over the -- the  
9 district itself, which had two resource areas. I can't even  
10 tell you how -- the number of people total on the district.  
11 Roughly five million acres of public land responsibility.

12 All of the resource-type issues associated with it.  
13 Responsibility for working on a variety of issues. Trying to  
14 keep the people informed at the state office. Also keeping  
15 the congressional folks informed in the State of Oregon, and  
16 as well as the county elected officials.

17 Q. And as the district manager, were you also supervising  
18 various people like resource field managers and rangeland  
19 specialists, sometimes referred to as range --

20 A. Yeah. Usually I -- I would be the supervisor over the area  
21 managers or field managers. And then the ranch  
22 conservationists were under them.

23 Q. Could you give us a little heads-up on this thing, how it's  
24 going? Would you tell us what a range con or rangeland  
25 specialist job was?

1 A. A rangeland specialist is a person that usually has a  
2 four-year degree out of the university, college. They're given  
3 a certain geographic area of responsibility within a district  
4 or resource area, where they would be responsible for managing  
5 the -- the grazing program within that particular geographic  
6 area. Sometimes they would report directly to the -- the area  
7 manager, field manager, or a supervisory range conservationist.

8 Q. Now, back in 1999, sir, was one of the -- one of the  
9 folks -- or one of the grazing lease people that you were  
10 dealing with, was that the Hammond Ranch folks?

11 A. Correct.

12 Q. And were they your largest ranch that you were dealing  
13 with, sir?

14 A. I don't think so.

15 Q. No.

16 What were some of the other ranchers you were  
17 dealing with other than the Hammond Ranch, sir?

18 A. I think Roaring Springs was -- was larger. I don't know  
19 about the Otleys. I don't know about some of the other ones in  
20 the area. But I couldn't tell you how -- the size of the  
21 particular ranches.

22 Q. Well, directing your attention then, sir, to -- this would  
23 be the fall of 1999. So September.

24 Did you become aware that there was some public land  
25 that had gotten burned in the Hardie summer allotment area?

1 A. Yes.

2 Q. How did that come to your attention?

3 A. Do you happen to have the --

4 Q. Government's Exhibit -- Government's Exhibit No. 5, please.

5 A. I start to get -- I need that kind of stuff to remember.

6 Oh, it's up, but it's from an angle here.

7 THE CLERK: Do you want this as well (indicating  
8 notebook). Is that --

9 MR. PAPAGNI: Might be easier.

10 THE WITNESS: (Handed notebook.)

11 Can I come down to get it?

12 MR. PAPAGNI: With permission of the Court.

13 THE CLERK: The clerk will get it.

14 MR. PAPAGNI: Thank you, sir.

15 THE WITNESS: (Handed document.) Thank you very much.

16 BY MR. PAPAGNI:

17 Q. Have you had a chance to look at this letter before today?

18 A. Correct, yeah.

19 And how I learned about it is that -- that on the  
20 Hardie summer allotment, that Steve Hammond had called in and  
21 identified to -- to dispatch that he planned to do a burn,  
22 intended to conduct a burn in Sagebrush, Fir Creek -- on  
23 Sagebrush and Fir Creek and Bridge Creek allotments.

24 And he was advised at that particular time not to  
25 allow the fire to burn onto public land. And if he did so,

1 he may be held responsible for the suppression and rebuild  
2 costs associated with that, with that slopover or the burned  
3 area.

4 Q. Well, apparently -- refreshing your recollection from those  
5 letters in front of you, apparently, after Mr. Steve Hammond  
6 did that burn, it did go onto the public land. And there  
7 was -- about how many acres were burned?

8 A. Roughly 90 acres.

9 Q. And did that cause you to have a meeting with Mr. Steven  
10 Hammond, his father, and with his -- with Susie Hammond?

11 A. Yeah. We had a meeting with -- with -- with the family,  
12 there at the -- at the district office.

13 Q. Did that take place on October 28th, 1999?

14 A. Correct.

15 Q. And at that meeting, did you call Mr. Steven Hammond,  
16 discussing the fire?

17 A. Correct. What -- what I recall, in the -- in the document  
18 here, is basically a feeling that the fire could not be  
19 controlled; a prescribed burn, a fire, and that it -- it  
20 couldn't be maintained. It would go where it wanted to go.

21 Q. So Mr. Steven Hammond, when you spoke to him in the  
22 presence of Miles Brown, Mr. Brown -- who was Mr. Brown?

23 A. Mr. Brown was the field manager.

24 Q. And did Mr. Brown express any statements in -- to you --  
25 or, excuse me, to Mr. Steven Hammond about his taking no action

1 to prevent the burning of public land?

2 A. Taking no action to prevent the burning of public land --  
3 public land is not acceptable. In fact it was a fire trespass.

4 Q. Well, in that regard, sir, there's -- before you came into  
5 this courtroom, there's been some discussion about burning  
6 public land, the benefits and the liability.

7 Now, in your next paragraph in this letter that  
8 apparently you sent to him, was on November 5th, 1999, did  
9 you discuss with the Hammonds the Burns district's position  
10 on burning grazing lease property?

11 A. As far as a coordinated --

12 Q. Correct.

13 A. -- burn plan?

14 Yeah, in this particular -- and probably more so  
15 in -- in the Burns district than just about any place I've  
16 ever been in the bureau, is they've had a very strong  
17 coordinated prescribed burning plan. And by that, I mean,  
18 they're working with a cooperating effort between the public  
19 land and the private folks. So there's been a pretty strong  
20 history of those cooperative burn plans.

21 Q. Apparently in your letter, sir, you mentioned how many  
22 acres were treated that fall?

23 A. Yeah, approximately 25,000 acres.

24 Q. But your prescribed burn plan has certain guidelines or  
25 certain things that must be complied with. Correct?

1 A. Correct.

2 Q. Did you offer an opportunity to the Hammonds to engage in  
3 such prescribed burns with your agency?

4 A. Correct. I think -- that is the strongest focus that we  
5 wanted to make, is the importance of the cooperative Burn  
6 plans, and how -- how -- how important that is, and how that  
7 can set a whole landscape for improvements. So not only do you  
8 manage for your private, you're also looking at the public.

9 Q. Well, speaking of the public, clearly the -- there's a  
10 grazing use benefit to ranching folks. But what else are these  
11 public lands being used for?

12 A. Public lands are also being used for a variety of interests  
13 in recreation to wildlife issues, to watershed issues, to --  
14 anymore, threatened and endangered species is a big issue. But  
15 a variety of issues that have to be taken into account in every  
16 one of the -- of our coordinated burn plans.

17 Q. So unlike the private landowner, who can do pretty much  
18 what he or she wants with their property, you -- as a  
19 representative of the public -- you have to consider a lot of  
20 various things?

21 A. I do.

22 MR. BLACKMAN: I'm just going to object for the record  
23 to leading. It's not important now, but it may be.

24 THE COURT: Sustained.

25 BY MR. PAPAGNI:



1 Q. What factors do you take into consideration before doing a  
2 prescribed burn, sir?

3 A. The factors that I have to take into consideration are --  
4 are the -- the other resource values that are out there, as  
5 well as the public interest and safety.

6 Q. Now, on the second page of this letter, sir, there's a  
7 paragraph that refers to "future."

8 And would you tell us what you informed the Hammonds  
9 on October 28th, and also in this letter; what were you  
10 advising them?

11 A. In the future, we wanted to make it clear that we really  
12 want to work on a coordinated burn plan. And in the future,  
13 if -- if they decide to burn and -- and the burn gets over on  
14 the public land, that we will be taking legal action to recover  
15 the cost of the suppression and the fire rehabilitation.

16 So we wanted to really make it key that the focus  
17 was going to be the next time, that we're going to go after  
18 the suppression and costs -- recovery -- rehabilitation  
19 costs.

20 Q. Is one of your options, sir, to refer matters to law  
21 enforcement, to B.L.M. for investigation?

22 A. Correct.

23 Q. And then in this particular letter, you refer to an  
24 individual --

25 A. Dave Ward.

1 Q. And --

2 A. To be their contact.

3 Q. And why --

4 A. Because that's their -- the range conservationist.

5 Rangeland management specialist is their title.

6 When I started, it was rangeland conservation -- rangeland

7 management specialist is the title now.

8 Q. And when someone wants to go ahead and engage in this -- to  
9 burn public land with agreement, is permission given by the  
10 range con person? Or does it have to be from someone else?

11 A. Now, this is what -- I'm going by memory on that, okay?

12 On -- for the -- when -- when you work on a coordinated burn  
13 plan in there, you're -- the whole business is coordinated;  
14 your -- your prescriptions, your time frames that you're  
15 wanting to get the burn done, the whole business. So you work  
16 together on those initiation times.

17 Q. Can a dispatcher at the burn center give permission for  
18 someone to burn public property?

19 A. No. No.

20 Q. Now, after this letter in 1999 -- I want to see if I can  
21 refresh -- refresh your memory with a letter dated January 6th,  
22 2002.

23 MR. PAPAGNI: And I don't want it on the ELMO yet, but  
24 if I can approach -- hand it to the witness, please.

25 Ms. Root -- 2 --

1 MS. ROOT: It's going to be 227.

2 BY MR. PAPAGNI:

3 Q. 227. For purposes of identification. For purposes of your  
4 testimony, sir, just take a look at that.

5 A. Okay. I have. Now --

6 Q. I just want to have you refresh your recollection. I don't  
7 want you to go into it yet.

8 Do you recognize the letter?

9 A. I recognize the letter. I saw it yesterday.

10 Q. And the date of the letter, sir?

11 A. The date of the letter is -- has two dates on it. It has  
12 July 15th, 2002. Also June 26th, 2002.

13 Q. And it's a letter from whom, sir?

14 A. It's a letter from Steve Hammond.

15 Q. And --

16 THE COURT: Have you given this to defense counsel?

17 MR. PAPAGNI: Pardon me?

18 THE COURT: Have you given this to defense counsel?

19 MR. PAPAGNI: Yes. In fact, it's one of the exhibits  
20 attached to one of their pleadings.

21 THE COURT: Is it marked?

22 MR. BLACKMAN: If they could identify the pleading, we  
23 might be able to find it. But without that --

24 MR. PAPAGNI: If I could have it back, I'll give you  
25 the exact --

1 THE COURT: Is it marked as an exhibit?

2 MR. PAPAGNI: It is marked as an exhibit, Judge.

3 THE COURT: What's the number, please.

4 MR. PAPAGNI: The exhibit number is -- 227 is what  
5 we're marking that as.

6 MR. MATASAR: I don't think it's been marked yet, your  
7 Honor. It has not been marked.

8 MR. PAPAGNI: The document was attached to -- it was  
9 Document 111. And it was filed on May 18th, 2012, by the  
10 defense.

11 THE COURT: Just a moment. 227?

12 MR. PAPAGNI: It's -- it's 227 for identification,  
13 your Honor.

14 It was not part of your exhibit book yet.

15 THE COURT: 227 is the Department of Transportation --  
16 a copy of the document from them.

17 MR. PAPAGNI: I'm sorry? That's not the -- 227 -- I'm  
18 sorry, your Honor.

19 THE COURT: Show this to counsel, please.

20 MR. PAPAGNI: (handed document.) Oh, I'm sorry,  
21 Judge. This one was withdrawn, as you might recall. This was  
22 another matter. That's why it's a new number.

23 THE COURT: Well, we need to give it a different  
24 number than the exhibit we had before.

25 MR. PAPAGNI: Thank you, Judge. I'll take care of

1 that right now.

2 I take it defense counsel recognized the document?

3 MR. BLACKMAN: Not yet.

4 THE COURT: Do I have it?

5 MR. PAPAGNI: Yes, you do. It was a pleading that was  
6 filed by the defense, and it was one of the exhibits that they  
7 attached to it.

8 THE COURT: Go ahead.

9 MR. PAPAGNI: I'll need the letter back when you're  
10 done with it, Mr. Matasar.

11 MR. MATASAR: Oh, sorry.

12 MR. PAPAGNI: If I may, your Honor.

13 (Clerk handed document. Witness handed document.)

14 BY MR. PAPAGNI:

15 Q. Mr. Dyer, I'm going to have you take another look at this  
16 letter.

17 A. Okay.

18 Q. And I think where I was, sir, I was at the point where you  
19 were identifying this letter from Mr. Hammond.

20 Who's it addressed to, sir?

21 A. It's attentioned to Tom Dyer. So it's attentioned to me  
22 regarding a telecon -- teleconference on 6-26-2002.

23 Q. And I don't have that letter in front of me. But would you  
24 turn to the third page for me, please, sir.

25 A. Okay.

1 Q. And about the middle of the third page, sir, is there a  
2 paragraph that dealt with an incident in 2001?

3 A. There is.

4 Q. And, sir, could you -- with the permission of the Court --  
5 read that for us.

6 A. Sure. This says --

7 THE COURT: Do you intend to offer this as an exhibit?

8 MR. PAPAGNI: I do, your Honor. If --

9 THE COURT: What's the number, again?

10 MR. PAPAGNI: The number, Ms. Root?

11 (Pause, Mr. Papagni and Ms. Root conferring.)

12 MR. PAPAGNI: Since the other exhibits were withdrawn,  
13 I want to make sure our record is complete.

14 The exhibit number we would like it to have is 227.  
15 I understand that was an exhibit that was withdrawn  
16 previously.

17 THE COURT: We have to keep -- do that to make the  
18 record.

19 MR. PAPAGNI: Correct.

20 THE COURT: But I'll -- even though it's unrelated, in  
21 this case I'll identify the exhibit as 227A.

22 MR. PAPAGNI: 227 -- thank you, Judge.

23 BY MR. PAPAGNI:

24 Q. Mr. Dyer, we're now referring to Government's Exhibit 227A.

25 THE COURT: All right. First, are you offering it?

1 MR. PAPAGNI: I'm going to offer it.

2 THE COURT: Yeah, okay. I don't want anything read  
3 from it unless it's in evidence.

4 Do you object?

5 MR. BLACKMAN: No, your Honor.

6 THE COURT: Received.

7 MR. BLACKMAN: As long as the entire letter comes in.

8 THE COURT: Received.

9 Go ahead.

10 MR. PAPAGNI: The exhibit that we'll be offering --  
11 just to make sure what our record is -- is a clean copy and not  
12 the copy I provided him.

13 THE COURT: Yes.

14 BY MR. PAPAGNI:

15 Q. Now, we're to the point, sir, where we can read the  
16 paragraph, if you would, please.

17 A. It says -- this is -- this is from Steve. It says, We met  
18 in the B.L.M. office with a fire investigator last summer.

19 I was accused of setting a fire and a deer  
20 slaughtering episode that I was blindsided with  
21 after getting to the meeting. I was not there. I  
22 still have not received information that is being  
23 protected by the B.L.M. Dave was -- and Dave Ward  
24 is -- I -- who I think they're referring to -- Dave  
25 was the B.L.M. employee that had the responsibility

1 of informing and relaying information to the  
2 investigator. He had critical information that  
3 would have been beneficial to the investigation and  
4 instrumental in defense of our ranch, and without  
5 it, would imply my guilt.

6 BY MR. PAPAGNI:

7 Q. Thank you, sir.

8 Does that finish the paragraph?

9 A. No.

10 Q. I'm sorry. Finish the paragraph.

11 A. But did not see fit to relay the information.

12 I have asked for the information to be sent to me  
13 when the investigation is complete.

14 MR. PAPAGNI: Thank you.

15 That's all I intend to offer on that letter.

16 I have no further questions of the witness.

17 THE COURT: Thank you.

18 Cross.

19 CROSS-EXAMINATION

20 BY MR. MATASAR:

21 Q. Mr. Dyer, you indicated that Steven Hammond called before  
22 he set the fire. Right?

23 A. Correct.

24 Q. Isn't it true that he also called after the fire was set,  
25 to inform the B.L.M. that the fire got onto B.L.M. land?



1 A. (Pause, referring.)

2 Q. You might want to look at -- oh, I'm sorry.

3 A. Pardon?

4 Q. You might want to look at 1105.

5 Do you have the book there?

6 MR. BLACKMAN: It's ours.

7 BY MR. MATASAR:

8 Q. Oh, I'm sorry.

9 Well, exhibit you're -- yeah. 1105.

10 (Witness handed notebook.)

11 BY MR. MATASAR:

12 Q. Do you see the second page there?

13 A. The second page okay.

14 Q. It's --

15 A. In --

16 Q. It says, Page 2 of 4, on the bottom.

17 A. 2 of 4. And it has the Rich Finnerty at the top. Correct?

18 Q. Yes.

19 And does it refresh your recollection, if you look

20 at the paragraph that starts on 9-13-99?

21 A. It says on 9-13-99 at 11 -- 11:00 hours, Hammond

22 contacted Fire Control Officer Steve Morefield at

23 the Frenchglen guard station. Hammond said that

24 the fire had crossed on to B.L.M. land and had

25 burned approximately 40 acres. A GPS plot was done

1 of all --

2 Q. So --

3 MR. PAPAGNI: I'm sorry. May he finish the paragraph,  
4 if he may?

5 MR. MATASAR: Well, I have no objection. Go ahead.

6 THE WITNESS: Did you want me to --

7 Plot was done of all of the three fires, started by  
8 the Hammonds. And it was determined that the --  
9 the middle fire had burned 217.4 acres of B.L.M.  
10 land.

11 BY MR. MATASAR:

12 Q. So he called and alerted you. Although he got the amount  
13 wrong, he called and alerted you that it had burned on to  
14 B.L.M. land?

15 A. Correct.

16 Q. And it's true, is it not, that no costs were assessed  
17 against the Hammonds?

18 A. Correct.

19 Q. And there were other trespass fires in the Burns district,  
20 were there not, in '99?

21 You could look at 1107, and that might refresh your  
22 recollection.

23 A. You're going to have to refresh my recollection a lot, by  
24 the way. Okay?

25 MR. MATASAR: Cheryl, do you know where the ELMO

1 button is?

2 There it is. Okay. All right.

3 BY MR. MATASAR:

4 Q. Now, you're looking at the first page?

5 A. Correct. Correct.

6 Q. And two are trespass fires? Type 2 is a trespass -- is a  
7 trespass fire, is it not?

8 A. I can't tell from this, if it's a fire or just a trespass.

9 It looks like it's --

10 Q. Well, look at the second line. What's the name of the  
11 trespasser?

12 A. Steve Hammond.

13 Q. And what's the reported date?

14 A. 4-7.

15 Q. No. Is that not the number?

16 A. Oh, I see. 9-11.

17 Q. Okay. And do you think that's the fire that we're talking  
18 about?

19 A. (Pause, referring.) I don't know. I -- I would guess.

20 Q. I don't want you to guess.

21 What about -- do you know about the Otley ranching  
22 operation?

23 A. Um-hmm. Yes.

24 Q. Are you aware if there was a trespass fire involving  
25 Mr. Otley on 10-22-99?

1 A. (Pause, referring.) They have -- they have it registered  
2 in the book, anyway.

3 Q. Fine.

4 And what about on 11-6-99, involving Alan Bossout?  
5 Is that how you would say it?

6 A. Bossout.

7 Q. Do you know him? Is it Bossout? Is that the right  
8 pronunciation?

9 A. Your guess is as good as mine.

10 Q. Oh, you don't know him.

11 Well, it -- on the far right -- have you never seen  
12 this form? A form like this before?

13 A. I've seen forms like this, but I have not seen -- at least  
14 to my memory -- this form.

15 Q. Okay.

16 A. And I would not normally see this form.

17 Q. Okay. So you've seen forms like this. And what's the far  
18 right column for?

19 A. Collection.

20 Q. Collection of money as a result of a trespass?

21 A. Correct.

22 Q. And is it fair to say that Otley and Bossout's fires -- or  
23 trespasses resulted in collection of money, but the Hammonds'  
24 did not?

25 A. Correct.

1 Q. In the -- are you aware that Mr. Steven Hammond was upset  
2 that he was accused in effect of unethical hunting?

3 A. Unethical hunting?

4 Q. Hunting.

5 His concern was, was it not, in the letter that you  
6 read -- that Mr. Papagni gave you -- that's 227A --

7 MR. MATASAR: May I see that? (Handed computer.)

8 BY MR. MATASAR:

9 Q. Steven Hammond said he was accused of setting a fire and a  
10 deer slaughtering episode that he was blindsided with. Is that  
11 correct?

12 A. Correct.

13 Q. Was it not your understanding? Do you have some memory at  
14 all that he was upset that he was accused of a deer  
15 slaughtering episode?

16 A. (Pause.) No, not the deer -- not a deer slaughtering  
17 episode.

18 Q. So you don't recall that? Even though it's in the letter,  
19 you just don't recall it?

20 A. I don't take that as a deer slaughtering episode.

21 What I saw that was -- is -- is a -- an  
22 investigation of a particular fire that occurred on the Burns  
23 district that involved a hunting situation. I did not take  
24 that as a deer slaughtering, when I read that --

25 Q. Okay.

1 A. -- yesterday.

2 Q. But it was a hunting situation?

3 A. Correct.

4 Q. And that's what his concern was?

5 A. Yes.

6 MR. MATASAR: Okay. That's all I have. Thank you.

7 THE WITNESS: Okay.

8 MR. BLACKMAN: No questions.

9 REDIRECT EXAMINATION

10 BY MR. PAPAGNI:

11 Q. The only question I have, sir -- they used this exhibit.

12 To the far right, where it says -- the initials, says "case  
13 closed," it has the initials, it looked like MB. You said you  
14 didn't use these forms. That would be the form of --

15 A. Miles Brown.

16 Q. And he's a resource -- that person that was --

17 A. He's the field manager or area manager.

18 Q. And he was the person with you during the October 28th,  
19 1999, meeting that you --

20 A. Correct.

21 Q. -- you testified about?

22 A. Correct.

23 Q. And this letter that has caused some confusion here, sir,  
24 after you have seen this letter, were you still in the district  
25 when a new range con was signed for the Hammonds?

1 A. Yeah, I --

2 MR. MATASAR: You know, that's outside the scope --

3 MR. PAPAGNI: I'll withdraw the question.

4 THE WITNESS: I really can't --

5 THE COURT: That's all right. You're excused, sir.

6 MR. PAPAGNI: Our next witness would be Gordon Choate,  
7 Judge, but he's going to take a few minutes to prepare for his  
8 testimony.

9 THE COURT: Fine.

10 Let's take a short break.

11 We'll keep it short, so --

12 THE WITNESS: Do you want this?

13 (Clerk handed notebook.)

14 THE COURT: Members of the jury, if you want to step  
15 out to use the restroom, you certainly may. It's up to you.

16 THE JUROR: Can we go to our room now?

17 THE COURT: If you would like.

18 THE CLERK: You can use the restroom even down here.  
19 That would be even faster.

20 (Recess taken.)

21 THE COURT: All right. Call your next witness,  
22 please.

23 MR. PAPAGNI: Mr. Choate.

24 Oh, he's coming through that door. There we go.

25 THE COURT: And members of the jury, I may stand up

1 once in a while, wander around the courtroom. Don't pay any  
2 attention to me. Okay?

3 THE CLERK: Please raise your right hand.

4 (Witness sworn.)

5 THE WITNESS: Yes, I do.

6 THE CLERK: Please have a seat. Please speak into the  
7 microphone.

8 And then there's water here, if you would like some.

9 THE WITNESS: Thank you.

10 THE CLERK: Please state your full name, and then  
11 spell your name for the record.

12 THE WITNESS: My name is Gordon Choate. The last name  
13 is spelled C H O A T E.

14 DIRECT EXAMINATION

15 BY MR. PAPAGNI:

16 Q. Mr. Choate, I want you to give us some background about the  
17 work you've done in the world of hunting, and the things you've  
18 done as a sportsman in that world, sir.

19 A. Just in the world of hunting.

20 Q. Let's start with that.

21 A. Basically, I started hunting when I was -- I don't even  
22 know. I was going hunting with my dad when I was five, six,  
23 seven years old. And I have hunted pretty much my whole life.

24 Q. The area that you primarily hunted in, sir?

25 A. Southeast Oregon.



1 Q. And -- and the Steens Mountain area, have you hunted that  
2 area regularly?

3 A. Yes, many times. I grew up hunting in the Steens Mountain  
4 area.

5 Q. And have you had occasion to be hired as a professional  
6 guide on occasion?

7 A. Yes, I have.

8 Q. And in that regard, had a Greg Jantze hired you at one  
9 point?

10 A. Yes, he did.

11 Q. And was this your first -- how long had you been guiding  
12 for Mr. Jantze?

13 A. I'm sorry. I didn't hear that.

14 Q. How long had you guided for Mr. Jantze, been one of these  
15 guides?

16 A. I guided professionally that year.

17 Q. Okay.

18 A. I got paid for that year, and then that's the only year I  
19 guided for him.

20 Q. And in Mr. Jantze's hiring of you, did you have occasion to  
21 come in contact with a Dennis and Dustin Nelson?

22 A. Yes, I did.

23 Q. And were those people you were supposed to guide for?

24 A. Yes, they were.

25 Q. And this would be in September of 2001. Correct?

1 A. Yes.

2 Q. Now, I digress just a second.

3 In addition to your hunting, what other occupations  
4 have you had?

5 A. I worked at the mill from 1965. The mill in Hines from  
6 1965 to 1980. I logged for three or four years. Left Burns  
7 and then went to college and got my college degree. And became  
8 an alcohol and drug counselor, and then I became a director of  
9 an alcohol and drug treatment center in Madras. I left Madras  
10 in 1994, and purchased an antique store in Redmond, Oregon.  
11 And we had an antique store in Redmond, Oregon, for  
12 approximately 12 years. And then I started doing real estate,  
13 and just in time for the real estate market to crash. So --  
14 didn't do so good with that.

15 Q. Directing your attention to the time in September, 2001.

16 A. Yes.

17 Q. My voice is starting to crack a little bit, so I'll try to  
18 speak louder.

19 Before you met the Nelsons, where did you decide  
20 that it would be a good area to take them to hunt?

21 A. I looked at quite a few different areas on the Steens. But  
22 I decided that the northwest side would be the best, lower  
23 down, because it's where -- where I saw some of the nicest  
24 animals. A lot of scouting up there, prior to that.

25 Q. And you hunted that area, you said, for how many years

1 before?

2 A. (Shakes head.) I don't know. Many times.

3 Q. Before you met the Nelsons, did you have occasion to set up  
4 a base camp?

5 A. Yes, I did.

6 Q. And do you recall when you did that?

7 A. It was during the month of September. I don't remember  
8 exactly when I set up the camp.

9           It was probably two weeks prior to their arrival.  
10 And then I spent some time up there by myself, scouting and  
11 looking, and -- and seeing what was -- what was up there.

12 Q. I'm going to have the -- on the computers here -- there you  
13 go. That's Government's Exhibit No. 6.

14           Do you recognize that, sir?

15 A. Yes.

16 Q. And did you take that photo?

17 A. Yes, I did.

18 Q. And was that your camp site?

19 A. Yes, it was.

20 Q. -- back in September of 2001?

21 A. Yes, it was.

22 Q. This camp site was set up before you met the Nelsons?

23 A. Yes.

24 Q. Now, I have two maps here. And someone took the easel down  
25 so you can see.

1 And I'm going to --

2 MR. PAPAGNI: Judge, the rule is -- I don't like to  
3 get near the witness, and I know that. But we have these two  
4 maps. Could the bailiff put them there, on --

5 THE CLERK: Do you want to use this easel?

6 MR. PAPAGNI: That's good enough there. He can point  
7 to it.

8 THE CLERK: Right here?

9 Which one --

10 MR. PAPAGNI: Start with the lowest number.

11 Which one is that?

12 THE CLERK: 1.

13 MR. PAPAGNI: 1 is good.

14 BY MR. PAPAGNI:

15 Q. And we're going to try to put it up on the screen here.

16 There you go.

17 Sir, I want you to look at the screen, in  
18 Government's Exhibit No. 1, and could you point to the area  
19 where your camp site was located?

20 A. My camp was right here (pointing).

21 Q. Now, let's be fair about it. It's already on the map.  
22 Before today you had a chance to look at this map, did you not?

23 A. Yes, I did.

24 Q. You had a chance to help prepare it?

25 A. Yes.

1 Q. Is that map -- disregarding the green lines and anything  
2 that indicates a name not related to you -- does that fairly  
3 and accurately represent the -- the area that we're concerned  
4 with today, on -- that you were hunting back at the end of  
5 September, 2001?

6 A. Yes, it's a very good depiction.

7 Q. So you set up yourself your camp site. Then you had  
8 occasion to meet the Nelsons. Where did you meet the Nelsons,  
9 sir?

10 A. I met the Nelsons in Frenchglen.

11 Q. And did you take them to a base camp for them?

12 A. Yes, I did.

13 Q. And is that also on this map that's next to you,  
14 Government's Exhibit 1?

15 A. Yes. It's up here, just off of Fish Lake road, about a  
16 half a mile down to Moon Hill Road.

17 Q. And in that particular location, sir, in addition to what  
18 we call a base camp, that's where you kept -- what? A trailer  
19 or --

20 A. I had a camp trailer with water and shower and food, and  
21 that type of thing, yes.

22 Q. And the Nelsons had their vehicle there?

23 A. Yes.

24 Q. Okay. So after you set that camp up, where did you take  
25 them?

1 A. We drove from -- we left their vehicle at the base camp,  
2 and we drove all the way down there. It doesn't show up. You  
3 come down by Moon Hill, and then come back up in here and our  
4 camp.

5 Q. And what date did you and Nelsons get to your camp site, to  
6 begin your hunt where you guide for them?

7 A. It was Friday afternoon. I can't remember the exact date.  
8 It would be the -- probably September 27th. Whatever the  
9 Friday before the day before -- the day before hunting season  
10 was.

11 Q. And the reason why I asked you about the base camp where  
12 the Nelson's vehicle was to your camp site -- about how long  
13 was that drive?

14 A. It's -- it was a rough road. It -- probably depends on how  
15 you're driving, of course.

16 We took our time. Probably took us three hours to  
17 go around there because I wanted to show them parts of the  
18 country and some of the places they would be going through  
19 and hunting. And -- and we also drove up to the top of the  
20 Steens, and I showed them the view off the top.

21 So we just kind of meandered around and -- for  
22 probably about three -- three hours, down from there to get  
23 to the camp.

24 Q. And how much would you get paid for your guide services?

25 A. I got paid a thousand dollars.

1 Q. And before you took them hunting had you obtained a B.L.M.  
2 permit tag, do you recall? Or was that obtained by Mr. Jantze?

3 A. That was obtained by Mr. Jantze.

4 Q. Did you obtain an Oregon Department of Fish & Wildlife tag  
5 for Dustin Nelson?

6 A. Yes, I did. I did see that tag.

7 Q. Now, what type of vehicle were you driving, sir?

8 A. I was driving an '86 GMC, gray in color, with four-wheel  
9 drive, with a rack on the back.

10 Q. Now, assuming for purposes of this next question, the  
11 opening weekend of mule deer hunting season was Saturday,  
12 September 9th -- 29th.

13 A. Yes.

14 Q. Did you go hunting that day with the Nelsons?

15 A. Yes, we did.

16 Q. Would you briefly describe what you did that day with the  
17 Nelsons.

18 A. We -- we went out from our camp a ways.

19 They wanted to kind of kick off by themselves, which  
20 I told them where to go and how to circle back around.

21 And -- and so they did that for a while. And then I found --  
22 I went off by myself and found a group of -- of six or seven  
23 bucks. I finally got them called back. And we made a hunt,  
24 and stalk on -- on those bucks and decided that none of those  
25 bucks were good enough for -- it was Dustin's first -- first

1 hunt, and I was going to try real hard to get him a pretty  
2 nice buck. So we let all of those bucks go that day, and  
3 didn't take anything that day. So --

4 Q. On Sunday morning, sir, did you have occasion to resume the  
5 hunt?

6 A. Yes, we did.

7 Q. About what time did the three of you gentlemen get up?

8 A. We got up before daylight.

9 I don't remember the particular time, but it was  
10 before daylight. And we drove from our camp, over to here,  
11 all the way down to right -- right in here (pointing), we  
12 parked our truck.

13 And it was daylight before we -- or, I mean, it was  
14 before daylight before we got out of the truck.

15 Q. Now, sir, before today, you've had a chance to meet with  
16 myself and the paralegal next to me and prepare what's  
17 sometimes referred to as a Google Earth. If you will, kind of  
18 like a -- a video of the topography in this particular area.  
19 True?

20 A. Um-hmm. Yes. (Nods head.)

21 Q. Now, I need to ask you a few questions to make sure it's  
22 clear.

23 This particular Google Earth that we're looking at  
24 isn't of the terrain and the -- the trees and the situation  
25 at the time in 2001, is it?



1 A. Not to my knowledge, it's not, no.

2 Q. But you sat down with a young man, and you went through it  
3 to make it -- to go through it to see if it would be a fair and  
4 accurate description of the topography of the ground, the land?

5 A. Yes.

6 Q. And we're not claiming that it is the condition it was at  
7 the time in September 30th of 2001, as far as the actual trees  
8 and things. Correct?

9 A. Right. Correct.

10 Q. You also, during the course of preparing this Google Earth  
11 for this young man, you have what I'll call bubbles, which are  
12 particular stop points where certain events took place.

13 Correct?

14 A. Yes.

15 Q. You reviewed those before today. Correct?

16 A. Yes.

17 Q. And are those accurate, and would you adopt those  
18 statements in that Google Earth as part of your testimony?

19 A. Yes.

20 MR. PAPAGNI: With that in mind, Judge, recognizing  
21 that we're offering it only for demonstrative purposes, I would  
22 ask permission of the Court to play it.

23 THE COURT: I'll allow that.

24 Jurors, when you hear a demonstrative purposes, I'm  
25 going to let them use it to explain their story.

1 But you may not take it for the exact conditions  
2 that were there. All right? Just to illustrate the  
3 witness's testimony.

4 BY MR. PAPAGNI:

5 Q. Now, Mr. Choate, I do have the benefit of a lady who seems  
6 to know how to work the machinery. So with the permission of  
7 the Court, I'll ask that she begin it.

8 My intent, Mr. Choate, is to first begin it, and  
9 then take you from bubble to bubble and ask you questions as  
10 we go, so that I can save the court and the jury some time.

11 MR. PAPAGNI: So if we can start, please, Ms. Root.

12 (Video playing.)

13 BY MR. PAPAGNI:

14 Q. Now, sir, we'll stop right there, if I can.

15 It says, "Choate's truck." Now, what does that  
16 represent, sir?

17 A. That represents where we -- I believe, where we got --  
18 parked the truck and got out of the truck, and begin our  
19 morning hunt on September 30th.

20 Q. So that takes us to the point where I had you with my  
21 questions where I said where you parked your GMC. Correct?

22 A. Right.

23 Q. Okay. Good.

24 So after you parked your truck, where did you --  
25 where -- where did you go? Did you indicate there --

1 A. We got out of the truck, and it was still dark. And we  
2 walked to the west. It would be to the -- to the left of the  
3 screen. And I had a very good spot out there, where I like to  
4 set a lot, and do binocularing, and looking for game.

5 And we walked out, approximately 30 -- 300 yards  
6 from that point, and set down and began looking.

7 Q. Now, sir, this particular area that you were in, was it  
8 public land, to your knowledge?

9 A. Yes, it was B.L.M. land.

10 Q. And you checked it out before you went there?

11 A. Oh, yes.

12 Q. And after you got to your site, how long were you there  
13 before the young man was able to get a buck?

14 A. We were there probably half an hour, 45 minutes.

15 MR. PAPAGNI: If you would go next, please, Ms. Root.

16 THE WITNESS: Oop, I went the wrong way.

17 MR. MATASAR: Pardon me?

18 MR. PAPAGNI: He wants you to say that you said it was  
19 the wrong way.

20 THE WITNESS: I pointed to the left, but it was  
21 actually to the right.

22 MR. PAPAGNI: And if you can stop there.

23 BY MR. PAPAGNI:

24 Q. And what represents that, Mr. Choate?

25 A. That's where we were setting. Where Choate and Dennis and

1 Dustin Nelson -- that's where we set up, and sat for a  
2 half-hour to 45 minutes.

3 And then we saw some -- a group of mule deer bucks  
4 come across the draw, and they walked up to us, and -- and  
5 then Dustin killed a buck right there, with one shot.

6 MR. PAPAGNI: Okay. Continue, Ms. Root.

7 Now, you can stop right there. I think those are  
8 going to be exhibits, and I want to make sure I get the  
9 numbers for us.

10 (Pause, referring.)

11 BY MR. PAPAGNI:

12 Q. I don't think that is an exhibit. That just looks like  
13 it's Dustin up there. Correct?

14 A. Yes, that's Dustin.

15 Q. Is that the buck he shot?

16 A. Yes, it is.

17 Q. Did you take that photo, or did his dad?

18 A. I don't remember --

19 Q. Okay.

20 A. -- whether I took the photo, or -- or Dennis did.

21 Q. Could you go on to the next one, please.

22 A. I think I --

23 Q. And who is in that photograph, Mr. Choate?

24 A. That's Dennis Nelson and Dustin Nelson, father and son.

25 Q. Now, sir, in that particular photograph, if I can stop for

1 a second, does it look like -- what's the weather conditions  
2 that particular morning?

3 A. Absolutely clear and beautiful and cool, and one of the  
4 prettiest hot mornings anybody could ever ask for.

5 Q. And while you were out there waiting, did you see any other  
6 hunting parties go by during the time you were there, before  
7 the buck was shot?

8 A. No.

9 MR. PAPAGNI: Continue, Ms. Root.

10 (Video playing.)

11 BY MR. PAPAGNI:

12 Q. And who's in this photograph, sir?

13 A. That would be myself and Dustin.

14 MR. PAPAGNI: Continue, Ms. Root.

15 (Video playing.)

16 BY MR. PAPAGNI:

17 Q. Now, we're back to the Google Earth, sir. What happens  
18 next?

19 A. Well, I was going to dress out the deer, but Mr. Nelson  
20 decided it was Dustin's first deer. And he wanted him to dress  
21 it out.

22 So I said I will go back to the pickup and bring the  
23 pickup down, around to blow them, where they could drag the  
24 buck down to the pickup. And they got it dressed. And so  
25 that's what I did, walked back to the pickup, and got in the

1 pickup and drove it around to where I was just -- just about  
2 right below them.

3 MR. PAPAGNI: Continue, Ms. Root.

4 (Pause, video playing.)

5 BY MR. PAPAGNI:

6 Q. How was the driving in that area, sir? How were the road  
7 conditions?

8 A. Pardon me?

9 The road was very rough at that time. It has been  
10 bladed since then, but it was very rough and rocky, and  
11 driving was very, very slow.

12 Q. And once you got to that location, sir, did something occur  
13 that got your attention, coming from the east?

14 A. Yes, it did. I saw a pickup approaching us.

15 Q. And would you describe what happened next, please.

16 A. I was parked there. I saw a pickup coming. Would be from  
17 the east. Would be going toward the top of the map.

18 And the road was very rough and narrow, so I pulled  
19 my pickup off the road, so that the approaching pickup could  
20 get by. There wasn't any wide spots right there. So I got  
21 my pickup off the road.

22 MR. PAPAGNI: Continue, Ms. Root.

23 (Pause, video playing.)

24 MR. PAPAGNI: Continue on, please.

25 (Video playing.)

1 MR. PAPAGNI: Stop there, please.

2 BY MR. PAPAGNI:

3 Q. As the truck approached you, did you have contact with its  
4 occupants?

5 A. Yes, I did.

6 Q. And who were the occupants?

7 A. One was Mr. Dwight Hammond, and I didn't know the name of  
8 the other one. And then there was a little boy sitting in the  
9 middle of the truck, between the two; the passenger and the  
10 driver.

11 Q. And for purposes of our record, sir, would you identify  
12 Dwight Hammond in the courtroom, sir, if you can.

13 A. Yes. He's sitting right there, with the headphones on his  
14 head.

15 Q. When Mr. Hammond came up to you, did you have occasion to  
16 have a conversation with him?

17 A. Yes, I did.

18 Q. Okay. Had -- did you recognize him, or had you recognized  
19 him from a previous contact?

20 A. I knew who he was, and I had had previous contacts with  
21 him. And, yeah, I knew who he was.

22 Q. And once you contacted -- or Mr. Hammond contacted you, did  
23 you have a conversation with him, or did he ask you any  
24 questions?

25 A. Yes, he did.

1 Q. What did he ask you, sir?

2 A. I can't remember if it was him or the passenger that asked  
3 me how we did. How we were doing --

4 MR. BLACKMAN: Objection.

5 THE WITNESS: -- and I told him --

6 MR. BLACKMAN: Objection.

7 THE COURT: Sustained.

8 BY MR. PAPAGNI:

9 Q. Okay. You have to only attribute to Mr. Hammond.

10 A. Okay.

11 Q. Do you remember Mr. Hammond specifically asking you any  
12 questions?

13 A. Yes, he asked where I was camped.

14 Q. And when he asked you where you were camped, did you tell  
15 him?

16 A. I -- no, I didn't tell him. I just motioned -- made a  
17 motion that we're camped back up -- back up there a ways.

18 Q. And was there a reason why you were not precise --

19 MR. BLACKMAN: Objection. Objection.

20 THE COURT: Well, overruled.

21 BY MR. PAPAGNI:

22 Q. Was there a reason why you were not precise about telling  
23 him where you were camped, sir?

24 A. Yes, I didn't want him to know where I was camped.

25 Q. And why did you not want him to know, sir?



1 MR. BLACKMAN: Objection.

2 THE COURT: Sustained.

3 BY MR. PAPAGNI:

4 Q. Did Mr. Hammond advise you about anybody else who was going  
5 to be in the area?

6 A. Yes. He said he had some hunters coming over the hill.

7 Q. Did he tell you how many?

8 A. No.

9 Q. And as you're having a conversation with Mr. Dwight  
10 Hammond, where was Dennis and Dustin Nelson, if you can recall?

11 A. They were up the -- the hill, behind us, coming -- dragging  
12 the buck down, off the hill, toward the pickup.

13 Q. After the -- you told him where -- generally where you were  
14 camped, and he [sic] told you he had a couple of people coming  
15 down the hill who were hunters, did he ask you a question about  
16 what you were doing? What was happening?

17 A. Not that I recall, other than he asked where we were camped  
18 and -- and --

19 Q. I'm sorry. My question was inarticulate.

20 Was there any discussion with Mr. Hammond and you  
21 about the deer that was shot?

22 A. Not with Mr. Hammond.

23 Q. Was there a conversation in Mr. Hammond's presence about  
24 this deer?

25 A. Yes, there was.

1 Q. And what was that?

2 MR. BLACKMAN: Objection.

3 THE COURT: Sustained.

4 BY MR. PAPAGNI:

5 Q. After you spoke to Mr. Hammond, was there any other further  
6 conversation regarding any -- Mr. Hammond give you any  
7 indication of any intentions they intended to do after he left?

8 A. No.

9 Q. And after you were through speaking with him, what  
10 direction did he drive?

11 A. He drove to the west. It would be toward the bottom of the  
12 map.

13 Q. And looking back now, at Exhibit No. 1 behind you, sir, you  
14 see a little dotted line there on that yellow?

15 A. Right here?

16 Q. There you go.

17 Now toward the yellow, would be toward your left  
18 there.

19 A. Right -- right here (pointing)?

20 Q. I want you to look at that, and it says there, "Choate's  
21 conversation with Dwight Hammond."

22 Is that the approximate location you were when you  
23 spoke with Mr. Hammond?

24 A. Yes, it is.

25 Q. And then after you're through speaking with him, what

1 direction did he travel?

2 A. He traveled right on down this road here (pointing).

3 Q. And after he left, what did you do next, sir?

4 A. We loaded the buck up in the back of the pickup. Dennis  
5 and Dustin were there, and we loaded the buck in the back of  
6 the pickup and headed back toward our camp.

7 MR. PAPAGNI: Ms. Root, if you would continue, please.

8 (Video playing.)

9 BY MR. PAPAGNI:

10 Q. And then you see it says --

11 MR. PAPAGNI: Stop there, please, Ms. Root.

12 BY MR. PAPAGNI:

13 Q. It says, "Choate and Nelsons." And then it has a couple of  
14 icons for bucks.

15 Is that approximately your location when you saw the  
16 group of bucks, sir?

17 A. Yes, it is.

18 Q. And behind you, sir, on the map it says, "Choate party  
19 observes deer and hunter."

20 A. Yeah. Right about there (pointing).

21 Q. So would you please testify, Mr. Choate, when you got to  
22 that location, describe what you saw.

23 A. We were all three sitting in the front of the pickup,  
24 driving down the road. And we looked up on the hill, and we  
25 saw some -- some bucks. There was approximately six, seven,

1 eight of them. They were coming down off the hill, where  
2 they -- on the -- on the right, and going toward the left.  
3 They were trotting, walking. They crossed down, right in front  
4 of us. And they trotted up on the far hill, on the left side  
5 and just stopped up there and started milling around.

6           We -- we were done hunting. But we -- it was a  
7 nice, pretty sight. And we stopped. And we were -- put our  
8 binoculars on the group of bucks, and we were looking to see  
9 if there was any -- any good ones, any bigger than we had  
10 got, or -- or just they're a beautiful animal.

11           And we were -- two of us -- I know Dennis was  
12 looking through his binoculars, and I was looking through my  
13 binoculars at the group of bucks.

14 Q. And as you were doing that, what else -- what happened  
15 next, sir?

16 A. A whole bunch of shooting started.

17 Q. Describe that, please.

18           What -- what did you do when the shooting began,  
19 sir?

20 A. What did I do?

21 Q. What did you see?

22 A. What did I -- what I saw was I had my binoculars on the  
23 herd of bucks, and I saw dust flying. I saw at least four bucks  
24 get hit by bullets. I saw one with a leg flopping, running.  
25 And basically the -- the herd of bucks just exploded like a

1 flock of quail. They just went in all different directions.

2 I saw one running off with his hind leg a waving  
3 like that (indicating with hand), because he had been shot in  
4 the hip, it looked like to me, and his leg was broke.

5 And I saw dust and blood fly off of at least three  
6 other ones. And there was quite a number of shots. It's  
7 hard to say exactly how many there was. There was between --  
8 probably between 10 and 20 shots. We all agreed that it was  
9 probably 15 to 17 shots fired at the herd of bucks. It was a  
10 very disgusting site.

11 MR. PAPAGNI: Continue, Ms. Root, please.

12 (Video playing.)

13 THE WITNESS: I was very upset that that was happening  
14 at the end of my -- my clients' hunt, which was nearly a  
15 perfect hunt for them, and then this was happening.

16 BY MR. PAPAGNI:

17 Q. After you saw the bucks scatter, sir, did you -- what did  
18 you do with your two passengers that you were guiding?

19 A. We put our binoculars down and said -- I don't remember.  
20 Something to the effect, Oh, my God, and stuff like that.

21 And I said, Well, we need to get out of here. And  
22 we started driving on down the road, toward the -- I went  
23 back to our camp, which was just down there, and goes back to  
24 the left. So we started driving down that way.

25 MR. PAPAGNI: Continue, Ms. Root.

1 (Video playing.)

2 MR. PAPAGNI: Go ahead.

3 (Video playing.)

4 MR. PAPAGNI: Stop there.

5 BY MR. PAPAGNI:

6 Q. At one point, as you're trying to leave the scene, do you  
7 have occasion to look in the direction where you believe the  
8 shots were coming from?

9 A. Yes.

10 Q. Describe for the jury what you saw, please.

11 A. As we driving out, we hadn't gone maybe 50 yards, driving,  
12 and Mr. Nelson said, There's -- there's somebody right there.  
13 And I -- it was out the right passenger window and up the hill,  
14 from above me. And I bent down and -- by my steering wheel,  
15 and looked up the hill. And I saw a person with a white cowboy  
16 hat standing up there. And it was just almost as soon as I saw  
17 him, he just dropped down in the sagebrush and hid.

18 Q. Could you give us the best description of who you thought  
19 it was, or what this person looked like?

20 A. I was probably 95 percent positive it was Steve Hammonds.

21 Q. You'd seen him before?

22 A. Yes.

23 Q. Was the person you saw drop down a -- a teen -- appeared to  
24 be a teenager, sir?

25 A. No, it was not a teenager.

1 Q. Did you see anyone up at that -- up that side of the hill,  
2 besides the man in the white hat?

3 A. No.

4 MR. PAPAGNI: Continue, please.

5 (Video playing.)

6 MR. PAPAGNI: Stop there, please.

7 BY MR. PAPAGNI:

8 Q. Now, you're heading on your way back to camp, you said?

9 A. Yes.

10 Q. Before you headed on your way back to camp, did you have  
11 occasion to look back up in the area where you had seen this  
12 person that you saw wearing the white cowboy hat?

13 A. Yes, I did.

14 Q. Describe for the jury how you looked back and what you saw.

15 A. We -- we drove on down the road. And then that switch  
16 back, right there, goes up you over the hill. And we got about  
17 two-thirds of the way up, over that hill. And I was driving,  
18 and I saw some people in my rearview mirror, and I stopped.

19 And Mr. Nelson and his son and I turned around and  
20 looked back behind us. And there was four men with rifles,  
21 which included the guy -- the -- the person in the white  
22 cowboy hat. There was four men with rifles standing over  
23 there, in a group, and it looked like they were just standing  
24 there, talking.

25 I told the Nelsons that we needed to get out of

1 there, that I was very uncomfortable with the situation, and  
2 we needed to leave. And -- which is what we did.

3 MR. PAPAGNI: Continue, Ms. Root.

4 (Pause, video playing.)

5 BY MR. PAPAGNI:

6 Q. Now, sir, this -- this shooting of these deer that you  
7 described for us, approximately how long was it after -- the  
8 shooting of the deer was it after you would converse with  
9 Mr. Dwight Hammond?

10 A. Repeat the question, please.

11 Q. Sure. Approximately how long was it after you had spoken  
12 with Dwight Hammond did this shooting of the deer take place?

13 A. Probably half an hour, 45 minutes, because what we did was  
14 we drug the deer on down to the pickup, and loaded the -- after  
15 Mr. Hammonds left, we drug the deer on down to the pickup, and  
16 loaded the deer in the back of the pickup, and then proceeded  
17 to drive down the road.

18 And we -- we talked a little bit, you know. And we  
19 were all happy that Dustin -- Dustin had got a really nice  
20 buck. But then we wanted to get back to camp. So --

21 Q. Now, you -- you weren't wearing a watch that day, I take  
22 it. Didn't see it in the photo. Were you wearing a watch?

23 A. Was I wearing a watch?

24 Q. Yeah.

25 A. No, I don't wear a watch out in the brush.



1 Q. Do you have any estimation of the time it was when the  
2 shooting of the deer took place?

3 A. The shooting of the group of deer?

4 Q. Yes.

5 A. It was probably 8:00, 8:30 maybe. It was still fairly  
6 early.

7 Q. Approximately how far from the area where the deer were  
8 shot was your camp site? What distance would you estimate it  
9 to be?

10 A. About a mile, mile and a half.

11 Q. And the approximate time to get to that location, over that  
12 rough road?

13 A. Probably 20 minutes.

14 Q. When you got back to the camp site -- that we now have back  
15 on the screen --

16 A. Um-hmm.

17 Q. -- what did you do, sir?

18 A. They got something to eat, and I got the buck out and  
19 proceeded to begin skinning the buck and hanging it up and --  
20 and finished the final processing, so we could do a good job on  
21 the game and preserve the meat real well for them.

22 Q. And as you were doing that, sir, did something cause you to  
23 stop dressing the deer out?

24 A. Yes.

25 Q. What was that, sir?

1 A. Mr. Nelson said, I see smoke.

2 Q. What happened next, sir?

3 A. I turned around, and I saw clouds of smoke bill --  
4 billowing up from the country that we had just came out of.

5 Q. So looking at the map that's behind you, that -- that I  
6 referred to before, could you put your hand in the general area  
7 where you saw that smoke coming from?

8 A. Right in there.

9 We were up here, looking back that way.

10 Q. And as you say, this smoke was coming to your camp. Could  
11 you describe the intensity of the smoke.

12 A. I'm sorry?

13 Q. You said you saw smoke coming into your camp. I'm sorry.  
14 I'm mumbling.

15 Could you describe the intensity of the smoke? Was  
16 it wispy? Was it thick? What was it?

17 A. It was a little bit wispy at first, and then it just kept  
18 getting thicker and thicker and thicker. And it was blowing  
19 right directly at our camp. And it got -- it got thick at our  
20 camp rather quickly.

21 Q. So what did you do?

22 A. I told the Nelsons that we needed to get their deer and  
23 their buck and get out of there.

24 Q. And is that what you did?

25 A. Yes, that's what we did.

1 Q. Approximately what time would you estimate it to be when  
2 you left your camp site that morning?

3 A. Probably 9:30 to ten o'clock.

4 Q. And where did you drive, sir?

5 A. We drove back out the way we had come in. Back out that  
6 way, and all the way around, and back up to the base camp,  
7 where we -- we had left Mr. Nelson's pickup.

8 Q. And do you recall about how long this drive was, sir?

9 A. I made it rather quickly, because I was in a hurry.

10 I would say probably two hours.

11 Q. And where did you take the Nelsons, sir?

12 A. I took them back to our base camp, where we left his  
13 pickup, over there on the mountain.

14 MR. PAPAGNI: Is the Google Earth --

15 A. And --

16 MR. PAPAGNI: Go back to the Google Earth, please.

17 Continuing playing.

18 (Video playing.)

19 BY MR. PAPAGNI:

20 Q. We're trying to fast-forward as quickly as we can,  
21 Mr. Choate, so if you can bear with us.

22 On this particular Google Earth, it indicates the  
23 location of some smoke. Did you have that smoke put in on  
24 Google Earth when you were preparing it?

25 A. Yes.

1 MR. PAPAGNI: Continue.

2 (Pause, video playing.)

3 BY MR. PAPAGNI:

4 Q. After you got the Nelsons back to their base camp, what did  
5 they do?

6 A. They decided they wanted to head on back home.

7 Q. And where was home for them, sir?

8 A. Salt Lake City.

9 Q. And it indicates on the Google Earth -- it was  
10 approximately what time, sir, did you dropped them off?

11 A. It was probably 11:30. And they probably left about 12:00,  
12 to my best estimate.

13 Q. You prepared this particular Google Earth and that bubble.  
14 Correct?

15 A. I helped prepare it, yeah.

16 Q. And after they left, then, sir, what did you do next?

17 A. I was rather upset. And I had left all my gear down at my  
18 camp, in a rush to get them and their gear out of there.

19 So I slowly started driving back down to my camp,  
20 just taking my time up along the top, up on Moon Hill Road,  
21 and watching the fire. And watching what it was doing and  
22 where it was going. And thought if it would change  
23 directions that might try to get back to my camp and get my  
24 stuff.

25 Q. As you were headed back, sir, did you stop to take photos?

1 A. Yes, I did.

2 Q. And looking again at Exhibit No. 1 -- the exhibit behind  
3 you, sir, it says, "Choate approximate photo point."

4 A. Right.

5 Q. Is that where you took your first set of photos, sir?

6 A. Approximately, yeah.

7 Q. And you were the one who helped prepare that map?

8 A. Yes.

9 MR. PAPAGNI: Go on, Ms. Root.

10 (Pause, video playing.)

11 BY MR. PAPAGNI:

12 Q. Now, we have on the screen a photograph.

13 Is this one of the photos you took, sir?

14 A. Yes, it is.

15 Q. Would you describe this photo for us, sir, because we  
16 weren't there.

17 A. I'm not sure how far away it was at this point. I had a  
18 pretty good camera with a telephoto lens. And I took -- I took  
19 wide-angle shots of the flame, and then I would zoom in on  
20 the -- on the smoke and the flames, too.

21 I wanted to show how big the fire was by that time,  
22 and I also wanted to show that smoke was blowing directly  
23 right at my camp. My camp -- you can't see it with the  
24 picture, of course. But my camp would be right down on the  
25 right-hand side. And when we left the camp, the smoke was

1 very -- very thick when we left the camp, and it was blowing  
2 right at us.

3 Q. And this is a photograph that you took?

4 A. Yes.

5 Q. And this would be approximately what time?

6 A. It would probably be 12:30, one o'clock.

7 MR. PAPAGNI: Go on, Ms. Root.

8 BY MR. PAPAGNI:

9 Q. Is this a photograph you also took, sir?

10 A. Yes.

11 Q. And is this at the same location that we were looking at  
12 before?

13 A. Yes.

14 Q. That you have on the map?

15 A. Yes.

16 Q. And what you did you do after you took those two photos  
17 sir?

18 A. I just kept driving. I took more than two.

19 Q. We'll see it.

20 A. But I just kept driving slowly down the road and watching  
21 the fire and seeing what it would do. And seeing if I could  
22 see anybody else, or -- or -- basically working my way back to  
23 the camp.

24 Q. Now, we're going to come back to the other photos that you  
25 took, sir. But for now, you're back at -- for Google Earth

1 purposes, you're back at your camp.

2 How long did it take you to get back to your camp?

3 A. It took me quite a while because I went very slow.

4 Q. Why did you go very slow, sir?

5 A. I was still very concerned about the fire and what the fire  
6 was going to do and which direction it was going to go.

7 You get on those roads up there, you can drive maybe  
8 three or four miles an hour. And if the wind's blowing ten  
9 miles an hour, 20 miles an hour, you're toast. So I was very  
10 cautious on my way back, about which direction and how the  
11 fire was going to act.

12 Q. And when you did get back to your camp, sir, what was the  
13 condition that you found it in?

14 A. It was as I had left it.

15 Q. And the smoke?

16 A. The smoke had started going toward the south more.

17 Q. And it was about what time?

18 A. Probably about four or five o'clock.

19 Q. And did you make a phone call at that particular time?

20 A. Yes, I did.

21 Q. Where did you call?

22 A. I called the B.L.M. fire dispatch.

23 Q. Before you called the fire dispatch, did you call other  
24 phone numbers trying to reach dispatch or a particular  
25 individual?

1 A. Yes, I did.

2 Q. And where was that? Briefly describe what you did.

3 A. The phone call?

4 Q. Yes, sir.

5 A. I called Mrs. Whitsel (phonetic). I can't remember her  
6 first name. And talked to her, to get the phone number from  
7 her. Her husband was guiding some other hunters further to the  
8 north that was up there. And she gave me the fire dispatch  
9 number to call.

10 Q. Do you know her husband?

11 A. Yes, I do.

12 Q. His name is?

13 A. Ah, I think it's Dan.

14 Q. After you spoke to her, did you get the number you needed?

15 A. Yes, I did.

16 Q. And did you call -- you said Burns?

17 A. Yes. I called the Burns fire dispatch.

18 Q. And what was the purpose of your making that call?

19 A. I wanted to report the fire and get ahold of some game  
20 cops, and tell them what I had saw about the shooting of the  
21 bucks.

22 Q. And were you able to reach him about -- what? Six o'clock  
23 in the evening?

24 A. Approximately that time, yeah.

25 Q. And after you spoke with him, what did you do next?



1 A. I started cooking me some supper.

2 Q. And did you notice anything go over your head, or fly  
3 over -- did you notice anything fly over you at that time?

4 A. Yes. There was --

5 Q. Before -- before I go onto this, there's questions.

6 Do you have any experience -- we talked about your  
7 background. Do you have any experience in flying?

8 A. Yes, I have a private pilot's license.

9 Q. And what type of planes have you flown?

10 A. I've flown 172s and Pipers, B-12s and Super Cubs.

11 Q. And this particular plane that went overhead, sir, did --  
12 you saw a plane go overhead, I take it?

13 A. Yes.

14 Q. What type of plane was it?

15 A. It looked to me like a Super Cub.

16 Q. And had you seen that plane before, sir?

17 A. Yes, I had.

18 Q. And when had you seen it before?

19 A. I had seen it circling over that area several times before.

20 And I think I saw it at the airport one time, and somebody told  
21 me that it was --

22 MR. BLACKMAN: Objection.

23 THE COURT: Sustained.

24 BY MR. PAPAGNI:

25 Q. Do you know whose plane it was, without someone telling

1 you, sir? Did you see someone in it?

2 A. I believed it was Dwight Hammond's airplane, yes.

3 MR. BLACKMAN: I object and move to strike.

4 THE COURT: The objection is sustained. The answer is  
5 stricken.

6 BY MR. PAPAGNI:

7 Q. This particular plane, after it went overhead, sir,  
8 where -- where did you camp for the night?

9 A. After it went over my head?

10 Q. Yes, sir.

11 A. By that time I was very nervous, so I took my sleeping bag  
12 and a sandwich, and I moved probably 75 yards up into the  
13 trees, and I slept in the trees overnight.

14 Q. Next morning, sir, did you have occasion to come in contact  
15 with any game officers?

16 A. Yes, I did.

17 MR. PAPAGNI: And -- go ahead, please, Ms. Root.

18 (Video playing.)

19 BY MR. PAPAGNI:

20 Q. Now, that bubble contains something that you have to  
21 testify to, sir. I want to stop it right there.

22 This particular plane that circled over your camp,  
23 it indicates, in the bubble, it went a particular direction.

24 Can you testify that was the case?

25 A. Yes, it was.

1 Q. Do you know where Hammond ranch is located?

2 A. Yes, I do.

3 Q. Okay. Was that the direction -- was that the direction it  
4 flew, sir?

5 A. That was the direction it came from and the direction it  
6 went back to.

7 Q. Thank you.

8 MR. PAPAGNI: Continue on, Ms. Root.

9 BY MR. PAPAGNI:

10 Q. About what time did you meet with them on October 1st,  
11 Monday, the game officers?

12 A. They arrived at about nine o'clock in the morning.

13 Q. And what did the three of you do, at first?

14 A. They ate breakfast.

15 Q. Whose breakfast?

16 A. Mine.

17 Q. And then --

18 A. The food I had.

19 Q. Pardon me?

20 A. Food I had with me.

21 Q. And then where did you go?

22 A. We drove on over -- we talked for a while, while they were  
23 eating breakfast, and I told them the situation. And I got in  
24 with them, and we drove all the way back over to where the deer  
25 herd had been shot up.

1           This fire was still burning, up toward the road.  
2   These two fingers were -- we drove right by those two fingers  
3   of flame, as we went by.

4           And then we got out and started looking -- they  
5   started looking for blood trails, to see if they could find  
6   crippled or dead deer.

7   Q.   Did you look yourself?

8   A.   Not very much.

9   Q.   Why not?

10   A.   Because I knew that the day after, blood trails are very  
11   difficult to see. They -- the blood dries, turns dark. It  
12   looks like dirt. And I didn't expect to find any blood trails  
13   that day.

14   Q.   And to your knowledge, did either of the officers?

15   A.   No, they did not find anything.

16   Q.   At some point were you standing by yourself while the  
17   officers were out looking for the wounded deer or dead deer or  
18   blood trails?

19   A.   Yes, I was.

20   Q.   And as you were standing there, sir, did other -- another  
21   group of people come by?

22   A.   Yes, they did.

23   Q.   Would you describe for the jury -- well, let's catch up to  
24   the Google Earth, before we do that.

25           (Pause, video playing.)

1 A. It was the same pickup I had seen the day before, with  
2 Mr. Hammonds in it. And they were coming back out this way  
3 (pointing).

4 Q. So on the map you're mentioning, Exhibit No. 1, you say  
5 they're coming out this way, they're going from the west,  
6 driving toward the east?

7 A. The east, yes.

8 Q. And you were at what location when you saw them?

9 A. I was probably up on this ridge, right here (pointing).

10 Q. And that was the area where the deer had been shot?

11 A. Yes.

12 Q. And were you by yourself at that point?

13 A. Yes, I was.

14 Q. What were you wearing?

15 A. I don't remember. Probably camo.

16 Q. Same clothes you wore the day before?

17 A. Um-hmm.

18 Q. And as they came by, were you in a position close enough to  
19 see or at least observe who was in the pickup?

20 A. I couldn't tell different individuals.

21 I did see the person in the white cowboy hat. And  
22 there was three or four people in the back of the pickup, had  
23 a seat in the back of the pickup. And there was three or  
24 four people with rifles in the back of the pickup. And I  
25 could not tell if it was -- who -- who was in the pickup.

1 And who -- it was far enough away -- it was about 100 yards  
2 away from me.

3 Q. Did you tell -- from where you were, since you couldn't  
4 tell who they were, as far as identification purposes, could  
5 you tell by their height, their weight, if they were teenagers  
6 or children in that pickup?

7 A. No.

8 Q. As they came by, did they stop and get out and talk to you  
9 or have any conversation with you?

10 A. No. They just looked at me as they drove by, and kept  
11 going.

12 Q. And that was the same pickup you said you saw who driving  
13 the day before?

14 A. I saw Dwight Hammond driving it the day before.

15 MR. PAPAGNI: Continue, Ms. Root.

16 BY MR. PAPAGNI:

17 Q. And that was the end of the Google Earth search.

18 So give us just one moment. We'll organize for a  
19 second, and I'll have a few more questions.

20 A. Okay.

21 Is there water in this? (Indicating decanter.)

22 Q. While Ms. Root is getting organized, sir, I'll try to be as  
23 efficient as I can with our time.

24 While you were up there, you described who you met  
25 and who you were with.

1           Besides the folks you had described for the jury  
2 today, were there any other hunters or hikers, or any other  
3 people in the area other than the folks that you described?

4           THE WITNESS: There was nobody in -- in this area here  
5 (indicating), other than the people I described.

6           Mr. Whitsel had a group of hunters back over this  
7 way, about a mile. But we never came in contact with any of  
8 them.

9           And, to the best of my knowledge, there was no one  
10 in that whole area.

11 BY MR. PAPAGNI:

12 Q. Now, I mentioned, sir, that I would go back to these fires.

13           MR. PAPAGNI: And if it's available, I would have you  
14 pull up, if you would, Government's Exhibit, 11, 12, 13, and  
15 14. Starting with 11.

16 BY MR. PAPAGNI:

17 Q. A photograph you took, Mr. Choate?

18 A. Yes.

19 Q. And this, again, would what would be Moon Hill Road?

20 A. Moon Hill Road, yeah. There's different names for it,  
21 but --

22 Q. And this particular photograph we're looking at, sir, do  
23 you recall whether it was the one you first took, that you  
24 were -- just after you left the Nelsons? Or was it further up  
25 the road after --

1 A. It was further -- further down the road.

2 And you can tell by the smoke that the wind is dying  
3 down a little bit because the smoke is going more straight  
4 up.

5 MR. PAPAGNI: No. 12, please.

6 BY MR. PAPAGNI:

7 Q. Again, a photograph you took, sir?

8 A. Yes.

9 Q. And the wind is blowing smoke, still in the direction of  
10 your camp?

11 A. It is still blowing in the direction of my camp, yes.

12 Q. And then No. 14, the final one, please.

13 A. Now, that's one of the earlier pictures, when -- when the  
14 wind was blowing stronger and keeping the smoke lower to the  
15 ground, and blowing right at my camp.

16 MR. PAPAGNI: Now, if I would -- Ms. Root, No. 7,  
17 please. If we could do No. 7.

18 BY MR. PAPAGNI:

19 Q. This would be earlier in the morning. Correct?

20 A. Yes.

21 Q. This is when you guys are still doing your hunt?

22 A. It's probably the day before.

23 Q. And that's the terrain and the territory we're looking at?

24 A. Yes. In fact that's where the bucks came from, and that's  
25 where the hunters came from, is through that green trees and



1 right down off that hill.

2 Q. When you were in this particular area, sir, did you see any  
3 cattle?

4 A. Any what?

5 Q. Cattle; cows, calves.

6 A. Not that trip, I don't believe, no. We didn't see any  
7 cattle that trip.

8 Q. And Exhibit No. 8.

9 This is a photograph of the father and son. We've  
10 seen it.

11 No. 9, that's you.

12 And then No. 10, please.

13 That photograph we've seen, but that's the one of  
14 Dustin Nelson?

15 A. Yes.

16 Q. Now, sir, to your back, I've got number -- Exhibit No. 1.  
17 And we're going to ask, through the courtesy of the clerk, to  
18 move No. 1. And there should be a map aside -- behind it.

19 (Pause, exhibit placed on easel.)

20 BY MR. PAPAGNI:

21 Q. And, sir, I have been referring you to exhibit numbers, and  
22 I want to have it on the record.

23 If you look to your left, sir, you see those little  
24 white circles. They have numbers inside them. And it's the  
25 same thing with the photographs in the areas there.

1 Do you see them?

2 A. Yes.

3 Q. And before today you've had an opportunity to look at  
4 those. Correct?

5 A. Yes, I've seen them.

6 Q. And that represents the approximate location you were at  
7 when you took those photos -- or the photographs were taken in  
8 your presence?

9 A. The photographs were taken from up in here, yeah  
10 (pointing).

11 Q. Thank you.

12 MR. PAPAGNI: And just, to complete the record, Nos. 3  
13 and 4, if we could just show them to Mr. Choate, off to the  
14 side, please.

15 BY MR. PAPAGNI:

16 Q. And I just want you to take a look at these, Mr. Choate, to  
17 identify them, since they do contain reference to you, sir.  
18 And just indicate if they're accurate.

19 A. What was your question?

20 Q. If you would just look at them, sir, and indicate whether  
21 they are accurate and the locations that are indicated on those  
22 particular maps.

23 A. Yes. As far as where I was. It's --

24 Q. With your name we're referring to. Correct?

25 A. The camp and the road and where the fire burned up and

1 across the road, and -- yes.

2 Q. Now, Exhibit No. -- I'm sorry. I'm getting a little ahead  
3 of you.

4 If you would say the exhibit for me, Mr. Choate. If  
5 you can -- in the upper left-hand corner.

6 A. Yeah.

7 Q. And the Exhibit No. is what?

8 A. No. 4.

9 Q. Thank you.

10 And that, too, is accurate, sir?

11 A. Yeah, it is.

12 Q. Thank you.

13 MR. PAPAGNI: Thank you, ma'am.

14 If you would go ahead and put up Exhibit No. 15,  
15 please.

16 BY MR. PAPAGNI:

17 Q. Now, 15 appears to be a map of the area.

18 Do you recognize that, sir?

19 A. Yes, I do.

20 Q. And why do you recognize it?

21 A. It was a map that was given to me to describe where I was  
22 and what happened, and different spots.

23 Q. And did you draw that map yourself, sir?

24 A. I didn't draw the map. I drew the figures on the -- down  
25 on the lower right side of it, where it's -- right there.

1 MR. PAPAGNI: Thank you for enlarging it, Ms. Root.

2 BY MR. PAPAGNI:

3 Q. So the -- the -- if you will, the markings on this map were  
4 done by who, Mr. Choate?

5 A. The camp, the -- No. 2, and the deer, and the arrows were  
6 drawn by me. I don't know what the 90 is. That's not my  
7 writing. But I -- I wrote everything else on there.

8 Q. Thank you.

9 And why did you draw -- prepare this particular map,  
10 sir, and why did you draw it?

11 A. Because -- I believe it was you that asked me to, to show  
12 the directions of when I -- when the pictures of the deer were  
13 taken, the directions we were facing when we took the pictures.

14 Q. Thank you.

15 MR. PAPAGNI: Other than the audio recording, your  
16 Honor, Government -- Government's Exhibit No. 19 and the  
17 transcript, No. 20 -- which I think the Court asked me to  
18 request before I offered it, to review it, I'm done with my  
19 direct examination.

20 THE COURT: Cross.

21 MR. MATASAR: Mr. Schroeder will be doing it.

22 CROSS-EXAMINATION

23 BY MR. SCHROEDER:

24 Q. Good afternoon, Mr. Choate. My name is Alan Schroeder.

25 A few questions.

1           Who was the person that held the permit to allow the  
2       Nelsons to go hunting with you? What's the name of the  
3       person?

4       A.   It was Brett Jantze.

5       Q.   Jantze is his name?

6       A.   Um-hmm.

7       Q.   And he was the one who held the permit?

8       A.   Yes.

9       Q.   And so were you within his employ to -- to work under his  
10      permit?

11      A.   Yes.

12      Q.   And so were you paid as an employee, or were you paid as an  
13      independent contractor? How were you paid?

14      A.   Probably paid as an independent contractor, because he just  
15      gave me a thousand dollar check, without any withholdings on  
16      it.

17      Q.   And do you need any special permit, independent of that,  
18      with the Oregon Department of Outfitters and Guides to do that,  
19      or you can do it under his permit?

20      A.   I can do it under his permit, to the best of my knowledge,  
21      yeah.

22      Q.   At that time, to the best of your knowledge?

23      A.   Um-hmm. (Nods head.)

24      Q.   And so when you got this job, had you done any other jobs  
25      with Mr. Jantze?

1 A. No.

2 Q. How did Mr. Jantze contact you for this job?

3 A. He was put into contact with me by my son-in-law. I  
4 mean -- excuse me, my stepson, Lance Thurmond. And he knew  
5 Brett Jantze. They had hunted together. And he told Brett --  
6 Brett got a Steens Mountain tag, and he told Brett that he knew  
7 somebody that knew the Steens Mountains very well. So he put  
8 us in contact with each other.

9 Q. And so you didn't have any independent permit with Oregon  
10 Outfitters and Guides.

11 Did you have one with the B.L.M?

12 A. No.

13 Q. Did Mr. Jantze have one with B.L.M?

14 A. I don't know.

15 Q. You indicated that you communicated with the B.L.M. to try  
16 to under -- understand things.

17 Before you went out on this hunt with the Nelsons,  
18 did you go to the B.L.M. office?

19 A. Yeah. I had been to the B.L.M. office several times.

20 Q. No, I am specifically asking you, before you went out on  
21 the ground with the -- with the Nelsons, in preparation for  
22 your hunt with the Nelsons, did you go to the B.L.M. office?

23 A. No.

24 Q. So you didn't go to the B.L.M. office and ask him if you  
25 need any permitting?

1 A. No.

2 Q. Did -- you didn't go to the B.L.M. office to ask for any  
3 land status mapping of the area?

4 A. No.

5 Q. You didn't go to the B.L.M. office to ask him if they had  
6 any prescribed fires that were planned during the time of your  
7 fire -- or --

8 A. No.

9 Q. -- excuse me, at the time that you were going to go out  
10 with the Nelsons?

11 A. No.

12 Q. So when you went out with the Nelsons, you did not know  
13 that the -- the Government had planned a prescribed fire  
14 within -- on the Steens Mountains?

15 A. No, I did not know that.

16 MR. PAPAGNI: I'm sorry. What was that last question?  
17 On the Steens Mountain?

18 MR. SCHROEDER: Yeah. He did not know that.

19 THE WITNESS: I assumed -- I assumed there was,  
20 because we saw a large amount of smoke, way to the south of us  
21 on Friday.

22 BY MR. SCHROEDER:

23 Q. I know. But my specific question is, in advance, in your  
24 planning, did you -- did you find out or investigate whether or  
25 not there was going to be any prescribed burning out there?

1 A. No, I did not.

2 Q. Okay. Now, I was a little confused at -- at the base camp.

3 The photograph that had the tent in it, that was the  
4 base camp that -- can you look over your left shoulder and  
5 tell me what that exhibit number is, Mr. Choate, please.

6 Help me out.

7 A. Over here?

8 Q. Yes, sir.

9 A. That's No. 2.

10 Q. Thank you.

11 Looking at No. 2, where it says "Choate/Nelson camp  
12 site," is that the base camp where the tent was?

13 A. Yes. This camp site right there is where the tent was.

14 Q. Okay. So when it says "base camp" on the bottom right-hand  
15 corner of Exhibit 2, that wasn't the base camp where you had  
16 the tent?

17 A. No. This was the base camp where the -- I called it the  
18 base camp, because that's where the trailer -- my camp trailer  
19 was and where he left his pickup.

20 Q. Okay. Now, when you met with Mr. Jantze about this, did he  
21 tell you the period of time that you were expected to take the  
22 Nelsons out on this hunt?

23 A. They paid for up to a five-day hunt.

24 Q. Okay. And until they got success, they could leave at that  
25 point in time, if they wished?



1 A. Either or, yeah. They could count five days or until they  
2 got a buck, yes.

3 Q. In this case they were successful -- what? On -- in a  
4 sense, the second full day?

5 A. The second day, yes.

6 Q. And so under your contractual relationship with them, they  
7 certainly were welcome and free to leave at that point in time,  
8 regard --

9 A. Yes, they were.

10 Q. Okay.

11 A. And they could have stayed, if they so --

12 Q. And they could have stayed.

13 A. Yes.

14 Q. But, certainly, you didn't have any obligation or -- strike  
15 that.

16 They didn't have any obligation to stay, if they had  
17 success; they could leave, if they wanted to?

18 A. Yeah. (Nods head.)

19 Q. And in this case, they had success.

20 A. (Nods head.)

21 Q. And you helped them with that, and they went home?

22 A. Yes.

23 Q. Now, I think it was, you said, the morning of September  
24 30th, 2001, when you stayed at the camp site, that's noted on  
25 Exhibit 2. And you drove down a road.

1           Would it be fair if I could call that the Bridge  
2 Creek Road?

3 A.   Where do you mean?

4 Q.   Well, it's marked in yellow on Exhibit 2, just where your  
5 Choate/Nelson camp site is.

6 A.   Um-hmm. Right here (pointing).

7 Q.   Yes.

8 A.   This is one of the Bridge creeks.

9 Q.   Right. I just want to get on the same terminology with you  
10 relative to this exhibit because sometimes people will be  
11 reading this transcript who aren't here and see your hand  
12 movements.

13 A.   Right.

14 Q.   And so I'm going to be calling that road the Bridge Creek  
15 Road, so you and I understand things. Is that okay?

16 A.   Sure.

17 Q.   So when you got up in the morning, you said you got up at  
18 daybreak?

19 A.   Yes.

20 Q.   And --

21 A.   No, we got up before daybreak.

22 Q.   Thank you. And did you serve the Nelsons breakfast?

23 A.   Yes, I did.

24 Q.   And at what point in time? Was it daybreak that -- when  
25 you left the camp site?

1 A. Which morning?

2 Q. I'm talking the morning of September 30th.

3 A. The day we killed the buck or the first --

4 Q. Yes, sir.

5 A. The day we killed the buck?

6 Q. Yes, sir.

7 A. It was before daylight we left camp and drove all the way  
8 over to where we parked the pickup, in the dark.

9 Q. Okay. And then you drove south onto Bridge Creek Road from  
10 your camp site location?

11 A. Yes.

12 Q. And then you went to a point where you said you had scouted  
13 deer before. Is that right?

14 A. Um-hmm.

15 Q. How much earlier had you scouted the deer before?

16 A. I had been up there probably five or six times in the month  
17 prior to hunting season.

18 Q. Oh, so we're talking between -- maybe July and August of --

19 A. It was part -- a couple of times in August, and probably  
20 three or four times in September.

21 Q. And based upon that information, you knew it was probably a  
22 reliable place for deer to be observed and potentially hunting?

23 A. Yes.

24 Q. And obviously that day, that came to be true?

25 A. Yes.

1 Q. Now, when you saw the deer at the time, when you were  
2 scouting for it, did you see the type of deer that Dustin ended  
3 up shooting on September 30th?

4 A. I saw several bucks that size, and I also saw some bigger  
5 ones.

6 Q. Did you see any forked horns in that area?

7 A. Oh, yeah, yeah. There was lots of forked horns.

8 Q. I'm sorry. Did you --

9 A. There's lots of forked horns in that area, too.

10 Q. Okay. And when you saw -- saw this particular deer, was  
11 the one that Dustin shot at, was that the only one? Was he by  
12 himself, or was there a number of deer with him?

13 A. No, there was probably five or six deer altogether, with  
14 him.

15 Q. And did you station him and help him pick out the best one  
16 to shoot at?

17 A. Yes, I did.

18 Q. And did he -- did he get the best one?

19 A. Yes, he did.

20 Q. Good.

21 A. In that group.

22 Q. In that group.

23 A. Um-hmm.

24 Q. After -- after this was done, you indicated in your  
25 testimony that Mr. Nelson wanted Dustin to dress it out.

1 A. (Nods head.)

2 Q. Does that mean clean it and skin it, and -- and package it  
3 for removal?

4 A. No. That means taking the intestines out. Field dressing,  
5 it's called, where you just remove the intestines and the  
6 stomach and the lungs.

7 Q. And -- and Mr. Nelson wanted his son to experience that?

8 A. Yes.

9 Q. Okay. And so why -- why was it at that point in time that  
10 you brought the truck around? Just so they could drag it down  
11 the hill?

12 A. It was -- I could get the truck a lot closer to them, and I  
13 could be right below them, where they could drag the deer  
14 downhill, instead of having to go around the side hill.

15 Deer don't drag very easily, but if you're going  
16 downhill, it makes it a little bit easier.

17 Q. Understood. And so Dustin and Mr. Nelson stayed with the  
18 deer?

19 A. Yes.

20 Q. And you went back to the truck and then drove it down so  
21 that they could drag it down the hill?

22 A. Yes.

23 Q. And that's when you said you had the encounter -- or you --  
24 you saw Dwight Hammond at that point in time?

25 A. Yes.

1 Q. You did not see Steve Hammond in the truck at that time?

2 A. No.

3 Q. After Dwight Hammond left in his truck, you indicated that  
4 the deer was brought down, and you put it in the back of the  
5 truck.

6 Did -- did you begin to dress it at that time, or  
7 did you just put it in the truck?

8 A. We put it in the truck, and I covered it up with some deer  
9 bags that I had to keep the dust out of the interior.

10 Q. Understood.

11 And so then you turned around, and then you were  
12 going to head back up Bridge Creek Road, back to your camp?

13 A. Yes.

14 Q. And is that the place you were going to dress it out, or  
15 were you going to dress it out clear over at your other base  
16 camp that's indicated on Exhibit 2?

17 A. I was going to dress it out at this camp here.

18 Q. Okay.

19 A. Where the tent was.

20 Q. Mr. Choate, make sure that I finish my question, and then  
21 you -- you finish the answer, okay? And I'll do the same with  
22 you.

23 A. Thank you.

24 Q. Thank you.

25 And so when you got back to the camp, to dress it

1 out, you hang it on a tree?

2 A. Yes.

3 Q. Okay. And at what point in time are you saying that you  
4 got back to the camp site?

5 A. Again, it's just a best guess because I didn't have a  
6 watch. But I estimate it to be about ten o'clock.

7 Q. And so in between daylight and ten o'clock is the time when  
8 all of the hunting occurred; you're seeing Dwight Hammond, and  
9 your seeing the other hunters coming across the hill and  
10 shooting at deer?

11 A. Yes.

12 Q. And once you got back -- strike that.

13 When you saw the other hunters, you indicated you  
14 saw one with a white hat. And you're saying it's a white  
15 cowboy hat?

16 A. Yes.

17 Q. You didn't see -- you say you were certain -- or 95 percent  
18 certain it was Steve Hammond.

19 A. Um-hmm.

20 Q. Did you see him in a baseball cap that day?

21 A. No.

22 Q. And so it's your testimony it was Steve Hammond, with a  
23 white cowboy hat that day?

24 A. I saw a person with a white cowboy hat that I guessed was  
25 Steve Hammonds. It looked like Steve Hammonds, from about 60

1 yards away.

2 Q. Okay. And so that's your guess as to who it was?

3 A. Yes.

4 Q. Okay. Now, once you're back at the camp site, dressing out  
5 the deer, did you serve the Nelsons lunch?

6 A. They -- they helped themselves. I didn't serve it to them.  
7 I said, I'm going to take -- told them I'm going to take care  
8 of the deer and finish gutting it, skin it out and bagged up  
9 and cleaned up. And they could just dive into the food and  
10 have a snack, whatever they wanted to do.

11 Q. So Dustin did the dressing out, and you did the rest of  
12 the --

13 A. Yes. Yes.

14 Q. -- preparation of the deer --

15 A. Yes.

16 Q. -- to get it transported?

17 A. Yes.

18 Q. And so to do that, you do what?

19 A. I left it in the back of the pickup, and uncovered it, and  
20 proceeded to skin the -- the hind legs out, and split the skin  
21 up the brisket, and up to the neck. And then I hung it up in a  
22 tree, and proceeded to skin the rest of it.

23 And when I had it skinned -- I got interrupted  
24 before I finished the skin. But afterwards, when I got to  
25 finish the skin, I skinned it. And got a bunch of water, and



1 washed it all out, and cleaned it all up as best I could.

2 Q. Takes some time to do that?

3 A. Yes, it does.

4 Q. Now, once you did all of that, you indicated that the  
5 Nelsons decided to -- to go -- to go back to Utah. Is that  
6 where they were from?

7 A. Yes.

8 Q. And so you had to transport them back?

9 A. Yes.

10 Q. And at that point in time you decided to leave all of your  
11 camp stuff there at the camp site?

12 A. I wouldn't have, if it wouldn't have been for the smoke.

13 Q. Well, at least at that point in time you felt it was safe  
14 enough to leave it there. Isn't that correct?

15 A. No, I didn't think it was safe enough to leave it there. I  
16 expected to find -- find a burned up camp when I got back.

17 Q. But I guess in this case you made the judgment to leave it  
18 there, and you didn't pack it up. Is that correct?

19 A. That's correct.

20 Q. Okay. Now, after making that judgment call that you made,  
21 you drove the -- the Nelsons back to the base camp where their  
22 vehicle was staying -- at, noted on Exhibit 2?

23 A. Yes.

24 Q. Okay. And then you said your good-byes, and they said  
25 thank you, and the congratulations, and they went home?

1 A. Um-hmm.

2 Q. Okay. And then you traveled back?

3 A. Yes.

4 Q. Okay. And you said you went slowly?

5 A. Very slowly.

6 Q. Now, once you got back, at what point in time did you  
7 say -- well, strike that.

8 At what point in your travels back -- I'm not asking  
9 a time -- did you call dispatch?

10 A. It was after I got back to camp.

11 Q. Okay. So it was at the camp that you called dispatch?

12 A. Yes.

13 Q. Is there cell coverage there?

14 A. Yes.

15 Q. And -- and so that's when you called.

16 Did -- did you have an occasion when you indicated  
17 that you met with Mr. Papagni in preparation of today? Did  
18 he show you any dispatch records at all?

19 A. Yes, he did.

20 Q. And did he show you any dispatch records indicating that  
21 you called dispatch on September 30th, 2001, at 17:57 hours?

22 A. Whatever time it was. I don't know military hours. It was  
23 five or six o'clock.

24 Q. Were you in the military?

25 A. No.

1 Q. Can you tell me what 17:57 means, in terms of time?

2 A. Probably about 5:00 or 6:00.

3 Q. So that would be at 5:57 that you made the call to  
4 dispatch?

5 A. Um-hmm.

6 Q. And so when you testified that it was at 4:00 to 5:00, that  
7 was a little bit earlier than what the dispatch records would  
8 indicate. Is that correct?

9 A. Um-hmm. I guess, yeah.

10 MR. SCHROEDER: No further questions, your Honor.

11 THE COURT: Redirect.

12 MR. BLACKMAN: Oh, I think -- I -- I'll be brief, your  
13 Honor.

14 CROSS-EXAMINATION

15 BY MR. BLACKMAN:

16 Q. When did you first see the smoke to the south?

17 A. When did I first see the smoke to the south?

18 Q. To the south. You mentioned something about smoke to the  
19 south.

20 A. Yes, that was after Mr. Nelson pointed out to me that there  
21 was a bunch of smoke coming from where we had just came from.

22 And I turned around and looked, and I had saw it at  
23 that time.

24 Q. Okay. So I thought you said that you had seen smoke  
25 further south.

1 A. We did.

2 Q. Okay.

3 A. On Friday. That was the day before the season.

4 We saw a bunch of smoke coming from way south, like  
5 20, 30 miles away from us.

6 Q. Okay. So you do not recall seeing smoke to the south on  
7 the day you were talking about, September 30th?

8 A. No. There was no smoke came from the south, that day.

9 Q. Okay. So you're not aware that the B.L.M. was burning to  
10 the south that day?

11 A. No.

12 Q. Okay. The game officers that came the next day, do you  
13 know their names?

14 A. Yeah. It was Rod Stannus (phonetic), and the other guy was  
15 a sheriff's deputy. He wasn't really a game officer. His name  
16 was -- I believe it was Matt Revak.

17 Q. Might have been Pete Revak?

18 A. Might have been Pete Revak, yeah.

19 Q. And might Pete Revak have been with U.S. Fish & Wildlife?

20 A. I'm not sure.

21 Q. Okay. Did you have a conversation with either of them  
22 about the burning activity that had been done by B.L.M. the day  
23 before?

24 A. No. I don't recall mentioning that to them.

25 Q. Or did they mention it to you?

1 A. No.

2 Q. Have you ever tried to find an injured buck using a dog?

3 A. Yes, I have.

4 Q. Okay. And that's -- if you're trying to find an injured  
5 animal, rather than tracking it by humans, isn't the easiest  
6 way to use a dog?

7 A. Yes, but I believe that's illegal.

8 Q. Well, it's illegal if you're hunting down a -- an alleged  
9 illegal shooting? In other words, if you're a law enforcement  
10 officer?

11 A. Probably it would be legal for a law enforcement officer to  
12 do it.

13 Q. And you had called in at 5:57, the night before, to report  
14 what you had believed to have been illegal hunting?

15 A. Yes.

16 Q. And the officers who were responding to you the next day  
17 were there to investigate that report of illegal hunting?

18 A. Yes.

19 Q. There was no dog, no other assistance in trying to actually  
20 track any --

21 A. No.

22 Q. -- animal that might have been injured?

23 A. No.

24 Q. You have to speak loud enough so --

25 A. No, there was no dog with them.

1 Q. Does the camera that you use have a capacity to capture the  
2 date and time of the photograph?

3 A. Yes, it does, but I had that turned off, I believe.

4 Q. Okay. At least it's not on the photos. You agree with  
5 that?

6 A. It's not on the photos.

7 Q. Last question.

8 Do you know Russell Hammond?

9 A. No, I don't.

10 Q. Do you know who that is? Do you recognize that name?

11 A. All I know is it's the Hammonds. I don't know how he's  
12 related. No, I don't know who that is.

13 Q. Okay. Do you know Scott Gustofson?

14 A. No.

15 Q. Do you know Jacon Taylor?

16 A. No.

17 Q. Do you hunt -- I lied -- I guess I lied. I do have another  
18 question.

19 Do you hunt for yourself?

20 A. Yes, I do.

21 Q. Are you familiar with the fact that there are different  
22 seasons for different wildlife?

23 A. Oh, yeah.

24 Q. Do you remember in '01 when the elk season was?

25 A. That year?

1 Q. Um-hmm.

2 A. No, I don't remember that year. It changes every year, it  
3 seems like.

4 MR. BLACKMAN: That's all. Thank you.

5 MR. PAPAGNI: Couple of questions.

6 REDIRECT EXAMINATION

7 BY MR. PAPAGNI:

8 Q. When Dustin Nelson shot his deer, who tagged it?

9 A. He did.

10 Q. And how many times have you dressed a deer?

11 A. Lots.

12 Q. So when you were asked this question by this gentleman here  
13 about how long it took to dress a deer, some people can do it a  
14 little quicker if they've got a little more experience?

15 A. Oh, yeah.

16 Q. And this gentleman was asking you about leaving your camp  
17 to maybe burn up.

18 What was more important to you at the time, the  
19 Nelsons or your camp?

20 A. The Nelsons were definitely the most important.

21 Q. And I don't want to strike that.

22 And as far as the V Lake is concerned, do you know  
23 where V Lake is located? Have you heard of V Lake, in that  
24 neck of the woods?

25 A. V Lake.

1 Q. V Lake. Have you ever heard of that sir?

2 A. No.

3 Q. Okay. And you were asked a series of questions regarding  
4 this phone call that you made to the Burns dispatch center.

5 MR. PAPAGNI: By courtesy of the bailiff, I would ask  
6 you to look at Government's Exhibit No. 20.

7 Don't put it up on the screen yet. I want to make  
8 sure the judge knows which one I'm referring too, first.

9 THE WITNESS: Yes, I recognize that as a transcript of  
10 my phone call.

11 BY MR. PAPAGNI:

12 Q. You were asked about the gentleman about this transcript.  
13 And you've seen it before today. Correct?

14 A. Um-hmm.

15 Q. And it has the military time at the top. Correct?

16 A. Yes.

17 Q. And you used that transcript to refresh your recollection  
18 about the phone call you made to the Burns Interagency  
19 Communications Center. Correct?

20 A. Yes.

21 MR. PAPAGNI: Okay. Now, we have the audiotape here,  
22 and I believe it's been admitted into evidence, but I don't  
23 want to go into it yet.

24 So with that, I have no further questions of my  
25 direct -- redirect, your Honor.



1 THE COURT: Thank you.

2 Anything else?

3 All right. Members of the jury, some of you are  
4 farm folks. That's my background, too.

5 You don't always finish things at five o'clock, do  
6 you? If you're on the farm. And we didn't today, but I'll  
7 work hard to do that. But better to finish this witness, and  
8 take a new one in the morning.

9 We'll start at nine o'clock. Thank you very much.  
10 Have a good weekend.

11 MR. MATASAR: Your Honor?

12 Could we have just one minute after the jury leaves?

13 THE COURT: Yes. Of course. I'll stay right here.

14 THE WITNESS: Am I excused?

15 THE COURT: You are excused.

16 Thank you, Mr. Choate.

17 MR. PAPAGNI: Mr. Choate, if you would please wait  
18 outside for me, sir.

19 (Jurors exit.)

20 THE COURT: All right. Mr. Matasar.

21 MR. MATASAR: Your Honor, I just want to follow up on  
22 our objection to the Google Earth exhibits.

23 There's -- there's just two things I want to  
24 mention.

25 One is the sort of rehearsed nature and preparation

1 with the witness of a movie that has been shown that is  
2 wholly unlike what typical testimony is. It may be where  
3 we're going in the future, but I want to reiterate my  
4 objection.

5 And, second of all, specifically there were several  
6 times that it acted as a -- a -- sort of a super gigantic  
7 leading question, because the Google Earth was shown past the  
8 point where the witness was testifying.

9 And so I -- if you're going to let them continue to  
10 do them, in general I would ask that you and the Government  
11 be particularly alert that they can't be showing things like  
12 Choate back at camp ground, phones in a report to the B.L.M.  
13 dispatcher, the airplane in a certain direction. We really  
14 can't have that kind of super, fancy leading questions. So I  
15 make both objections.

16 THE COURT: You do it after the questions asked. You  
17 should see -- I'm going to talk on computer-generated evidence.  
18 And it is -- some of the theoretical questions involved --  
19 involved are fascinating. Some of the best have been done  
20 concerning airplane accidents. I don't know if you've seen any  
21 of those, but they really are quite fascinating.

22 I've seen -- I've seen an excellent one done on a  
23 murder case, and which was much more suggestive than we saw  
24 today, frankly.

25 But I understand. And we will -- I'll continue to

1 tell the jury that this is -- I think I even used the words  
2 today, which I tried to make the point pretty strongly with  
3 the jury when I said they're showing this to illustrate their  
4 story.

5 MR. MATASAR: And maybe you can also tell them it's  
6 not going back to the jury room. I know we know that, that  
7 that's what you mean when you say it's demonstrative. But  
8 maybe they should --

9 THE COURT: Well, eventually they'll ask for it, and  
10 I'll tell them no.

11 MR. MATASAR: So you're saying I should make leading  
12 question objections at the time.

13 THE COURT: If you wish.

14 MR. MATASAR: Understood.

15 THE COURT: And then you'll do it a couple of times.  
16 I'll tell the jury what you're doing, and you'll stop.

17 MR. MATASAR: That's okay. That's how it works.

18 MR. PAPAGNI: I appreciate Mr. Matasar's objections.  
19 But I think we did a pretty good job of trying to get the  
20 witness to testify before the bubble popped up. I think there  
21 were two occasions it did not.

22 And I think I even made the point of saying that, so  
23 the jury would know it.

24 And so I apologize, Mr. Matasar, by Ms. Root was  
25 doing the best she can. And we'll try do the best with

1 Mr. Glascock and Mr. Okeson. Unfortunately, they're not  
2 until probably next week.

3 So we have that little issue. I apologize to the  
4 Court about the letter that came in through Mr. Dyer. It was  
5 a letter the defense had given me, so I thought they were  
6 aware of it. And it was my mistake, and Ms. Root. We had  
7 had it marked, but there was some confusion, as to having an  
8 earlier withdrawal of letters.

9 I do know that after Mr. Blackman's done saying some  
10 things, I do know my co-counsel has some things for the  
11 Court.

12 THE COURT: All right. Well, before she speaks,  
13 I'll -- none of you need to take your testosterone before  
14 tomorrow. You're doing just fine in that regard.

15 You'll find a pace that works just fine. I'm  
16 planning on about ten witnesses a day, just so that you know.

17 Ms. Sgarlata.

18 MS. SGARLATA: Thank you, your Honor.

19 From the defendants' opening statements, I have a  
20 couple of issues. One was there was a mention of origin and  
21 cause reports, and there was specific mention that my ears  
22 heard to say those reports would be offered to the jury. And  
23 I'm aware of one origin and cause report in the defendants'  
24 exhibits that's been admitted. I'm not aware of plural. And  
25 I wonder if they mean --

1 THE COURT: There was a remark made about plural.

2 MR. BLACKMAN: Your Honor.

3 THE COURT: Is that a misstep?

4 MR. BLACKMAN: I cannot answer.

5 I intend to cross-examine the Government witnesses  
6 with the statements in the O and C reports that say that they  
7 were torching on the D side of the road.

8 THE COURT: You have the same ones. That's what I  
9 understood him to mean.

10 MS. SGARLATA: That's fine, your Honor. But my issue  
11 is this. If that's what they want to do, use those reports to  
12 impeach my witnesses with -- as prior inconsistent statements,  
13 or what have you, I would like the Court to admonish the jury  
14 that those are not for the truth. They're only for  
15 impeachment. And that those are not going back to the jury  
16 either.

17 THE COURT: Well, I'll handle it when we get to it. I  
18 understand how that works.

19 MS. SGARLATA: I have another issue that was raised as  
20 well in the opening statement, and that goes to proposed expert  
21 testimony.

22 We haven't been advised of any experts who are  
23 experts in lightning or lightning-struck trees or anything  
24 having to do with fire behavior, frankly.

25 We know that we have Roy Hogue who has origin and

1 cause determination experience. A lightning struck tree from  
2 six years later, I think it's difficult to look at a tree six  
3 years later. I don't think Mr. Hogue has the expertise for  
4 that. So I would like to know who is going to be testifying  
5 to that.

6 THE COURT: I will tell you that before -- he's the  
7 only expert I know of. And I'll -- before he's called, we'll  
8 have a little mini-**Daubert** hearing, on non-8:00-to-5:00 hours.  
9 And you'll have a chance to ask him: Are you sure you can tell  
10 six years later?

11 MS. SGARLATA: We appreciate that.

12 MR. BLACKMAN: And, your Honor, with all due respect  
13 to Ms. Sgarlata, she was present with me when we talked with  
14 Mr. Hogue on the phone quite recently, when he explained to her  
15 how he had walked the areas, located lightning struck trees,  
16 located aerial photographs that preceded --

17 THE COURT: Okay. You're too early -- you're too  
18 early for that. I don't need argument. But with a few  
19 questions of him we can make the record in this regard, and  
20 I'll give you a decision.

21 MS. SGARLATA: Thank you, your Honor.

22 MR. PAPAGNI: I think it would make judicial efficient  
23 use of time, while we're doing Mr. Hogue, we might want to take  
24 care of -- what is his name? Senator (phonetic)? We just got  
25 his report. We might take care of him, too.

1 THE COURT: That's fine.

2 MR. PAPAGNI: Thank you, Judge.

3 MR. BLACKMAN: The only thing I want to raise, your  
4 Honor, is scheduling.

5 I had assumed -- foolishly thought that we might  
6 have made a mistake by scheduling our first witnesses for  
7 Monday; that the Government might finish, and you might  
8 expect us to call witnesses on Friday. And we were  
9 discussing last night whether we ought to have some people  
10 available on Friday.

11 Then in -- I think it was in opening, Mr. Papagni  
12 mentioned that Mr. Glascock would be testifying on Monday.  
13 And I think he may have just mentioned that somebody else  
14 might be testifying --

15 THE COURT: Let me tell you how that's going to work,  
16 all right?

17 MR. BLACKMAN: Because I want to know when you want to  
18 have -- I want to be clearly instructed on when we're expected  
19 to have a witness, so if we don't have somebody -- but it's  
20 before we were told to -- we are not in trouble.

21 THE COURT: You probably should have someone hanging  
22 around on Friday. And if Mr. Papagni can tell me a reason he  
23 needs to hold the witness until later because of some personal  
24 issue, I'll consider it. But in that case we may not wait for  
25 all of his witnesses before you call some. I'll reserve any

1 motion/right you have.

2           With regard to -- frankly, I know that -- well,  
3 Mr. Papagni has witnesses listed at 30-some, or something  
4 like that. And if he calls them all, it will be the first  
5 time he's done it. So maybe he will. We'll see. You know,  
6 usually that doesn't tend to happen, as you know; as we all  
7 know. Right? We -- we do -- we do prophylactic witnesses.

8           MR. BLACKMAN: And, let me say, we can arrange to have  
9 some witnesses available Friday afternoon.

10          THE COURT: Um-hmm.

11          MR. BLACKMAN: It would be very inconvenient if we did  
12 that and then they had to go back.

13          THE COURT: I understand. I'm going to watch it  
14 carefully, and I expect that as we get closer -- well, what --  
15 here's what I want you to do. Mr. -- for the Government's  
16 side, and you later. As we get there, I would like to have you  
17 to give me for -- at least on a half-day basis, witnesses you  
18 have lined up to call and exhibit numbers which you'll need, so  
19 Ms. Wright can be --

20          MR. PAPAGNI: The exhibit list we amended has exhibit  
21 numbers with the witnesses all ready for her. We did that.

22          THE COURT: Okay. All right. Let's just watch and  
23 see how we do.

24          But, Mr. Papagni, if we're getting closer to the  
25 end, they do need some time to get people here. And you know



1     how impatient I am with time off of the trial.

2             MR. MATASAR:   Could we hear the witness -- tomorrow's  
3     half day?

4             MR. PAPAGNI:   You've got --

5             MR. MATASAR:   We have a whole list, and I don't know  
6     if you're cutting people out.

7             MR. PAPAGNI:   Well, right now I think that Dusty  
8     Hammond's going to be taking the stand tomorrow afternoon.  
9     We've got the Nelsons in the morning.  He has dialysis, but we  
10    think that is taken care of.

11            I sent my agent out to tell our witnesses,  
12    assistant, to make sure we get -- you know, the judge wants  
13    to do ten a day.  So we better line them up.

14            THE COURT:   Right.  And if you're running out of --

15            MR. BLACKMAN:   Excuse me, your Honor.

16            But in the order you list them probably?

17            MR. PAPAGNI:   That's my hope.  And if I don't have a  
18    witness here, then I'll take them out of order because I have a  
19    few backups.

20            MR. BLACKMAN:   So that means that, for example, you're  
21    not calling Mr. Jantze, because he was between Mr. Dyer and --

22            MR. PAPAGNI:   Mr. Jantze will probably testify on  
23    Friday, if I want him to.

24            THE COURT:   Basically -- you know, there's this little  
25    book that the Federal Bar Association in Oregon puts out, tell

1 about the quirks of the judges of the court. And I stopped  
2 filling out the questionnaire. But I particularly liked the  
3 answer of one of my courtroom deputies. I just -- a previous  
4 one, Pat Mermis. I just handed it to her. You fill it out,  
5 you know my quirks.

6 And to the -- to the question that it asked, What is  
7 the penalty for running out of witnesses, and she wrote, A  
8 savage lecture from the bench.

9 (Laughter.)

10 MR. PAPAGNI: You told me one time my case was done.

11 THE COURT: Well, I -- I am capable of that, if I  
12 think I've heard enough.

13 MR. PAPAGNI: There are -- there were some issues we  
14 left unresolved last Tuesday, Judge. One of them was this  
15 recusal issue, and I tried to skirt it during my opening  
16 statement. Not very well, apparently.

17 But we also have the Dusty Hammond issue. We also  
18 have some tape recordings. I don't want to go afoul of the  
19 judge who can give you a savage lecture. But if there's some  
20 point that -- I don't want to step over the line --

21 THE COURT: You want to ask some questions about the  
22 tape before they're offered?

23 MR. PAPAGNI: Some things like that, yes, Judge.

24 THE COURT: Okay. Well, do you need to put those tape  
25 recordings in right away?

1 MR. BLACKMAN: Are you talking about the Joe Glascock  
2 calls?

3 MR. PAPAGNI: Correct.

4 THE COURT: Yes.

5 MR. BLACKMAN: Your Honor, again, our intention was to  
6 use those in cross-examination of Mr. Glascock, until we got  
7 Mr. Steninger. We knew about them about a week before that.

8 THE COURT: Yeah.

9 MR. BLACKMAN: When Steninger's report came out, and  
10 he made reference to them, then we realized -- we provided  
11 them.

12 THE COURT: You can use them for that reason.

13 MR. BLACKMAN: And at this point, since I didn't use  
14 them in opening, they'll come in when Mr. Glascock testifies.

15 THE COURT: Sure. Okay.

16 MR. PAPAGNI: Thank you, Judge.

17 THE COURT: Thank you all. Have a good evening.

18 (Court adjourned.)

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I certify, by signing below, that the foregoing is a correct transcript of the oral proceedings had in the above-entitled matter this 12th day of June, 2012. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

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AMANDA M. LeGORE, RDR, CRR, FCRR, CE